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CURRENT EVENTS.

CO-OPERATIVE LEGISLATION. — What, for want of a better term, may be called co-operative legislation, is much in favor with many law reformers. There can be no doubt that since railroads have so thoroughly effaced State lines, so far as they affect the social and commercial relations of our people, there are many points on which uniformity of State statutory law is eminently desirable, not to say absolutely indispensable. To obtain this uniformity the scheme of this class of reformers is to procure from the legislatures of the several States the enactment of identical laws on those points on which such uniformity is most desirable.

Whether such projects are absolutely Utopian or merely difficult of achievement, we do not venture to say, for at this day it is very rash to hold that anything, not physically impossible, cannot be done, but we will say that the obstacles to any useful practical legislation of that description seem to us almost insurmountable. The pride of opinion, the self sufficiency of local legislators, the aversion to being, or seeming to be led, the spirit of "contrariness" generally, stand fearfully in the way of such uniformity of legislation, howsoever desirable it might be. And there are some subjects on which such uniformity is not merely desirable but rapidly becoming indispensable. Take for example the laws of marriage and divorce. That a marriage valid on one side of an imaginary line should be invalid on the other side, that children legitimate on the right bank of a river should be bastards on the left bank, that a man may desert his wife in one State and obtain a divorce from her in another State on the ground that she had deserted him: these things are possible in some of the States, and that possibility, in the full glare of the civilization of the last quarter of the nineteenth century, is simply disgraceful to all concerned.

There are other points on which uniformity of legislation is hardly less desirable, and the

necessity for such uniformity grows rapidly every year. The great question remains however, "What are we going to do about it?" There are three courses possible; one is to depend on the efforts of unorganized reformers; another, to secure the aid of the legal profession through its State and national organizations of bar associations; the third is to take the bull by the horns and agitate for a constitutional amendment committing to congress all legislation on the more pressing of these subjects.

To each of these courses there are grave objections. To the first that the unorganized reformers are unorganized, that the work to be accomplished, if done at all, will require organized and persistent effort, and that such reformers, howsoever well meaning, are usually enthusiasts and often wrong-heads. To the bar associations the objections are far less serious; they are organized and they are composed of men of undoubted ability; they are accustomed to legislative work in all its phases, and in every respect qualified to effect the contemplated reform if they could devote themselves to it. They have, however, upon their hands the whole body of the law, and it may well be doubted whether, in attempting so much, they may not fail to effect in any reasonable time results worthy of their efforts. However that may be, these associations furnish the best instrumentalities through which the profession and the public can hope to effect radical and needful legal reforms.

The question remains whether, in seeking to effect needful reforms of the law, it is best to attack the State legislatures *seratim*, or seek at once to transfer, by constitutional amendment, to congress such subjects as marriage and divorce and others of like universal interest and application. And such a proposition is met at once by the argument that the remedy is worse than the disease, that the general government has too much power already, that all such propositions tend to centralization. And thus we are led into a discussion akin to those of a hundred years ago when grave men who had faithfully passed through the "times that tired men's souls," seriously doubted whether it was possible that a State could be other than a province or a "plantation" if it should part with its right to levy customs duties on the pro-

ducts of its sister States, to coin "pine-tree" shillings, to issue paper proclamation money and make it a legal tender for all debts, public and private, to raise armies and equip navies.

The constitution of 1789 was, however, adopted, notwithstanding these doubts, and the subsequent amendments State rights still survive to such an extent that the administration of the great body of the law as between man and man is committed to courts organized by, and responsible only to, the States themselves.

While we deprecate the tendency of federal courts to extend their jurisdiction and absorb litigation that might well be adjudicated in the tribunals of the several States, we recognize the fact that such extension is in a great measure unavoidable, in consequence of the increased commercial intercommunication of our people. So far, however, as concerns the subject of marriage and divorce laws, we would be well content to see the whole subject transferred to the general government, if by that means could be obtained a *decent*, respectable and uniform system of law on these important subjects.

NOTES OF RECENT DECISIONS.

NUISANCE—CORPORATIONS ULTRA VIRES.—The Supreme Judicial Court of Maine recently decided a case¹ of some interest involving the liability of corporations and such *quasi* corporations as "towns" or townships for nuisances created by acts done under their authority and by their agents, but beyond the scope of their powers and *ultra vires*.

The facts were that the plaintiff had suffered what the court denominated "an intolerable nuisance" by a ditch or drain which by the direction of the corporation or town authorities had been constructed within the jurisdiction of the town and beyond its limits through the lands of other persons to the lands of the plaintiff upon which such ditch discharged its contents of sewage matter and foul water.

The declaration of the plaintiff was met by

¹ Seele v. Inhabitants of Deering, April 5, 1887; 10 Atl. Rep. 45.

a demurrer and the court said that if, under the state of facts admitted by the demurrer, the defendant had been an incorporated city, the plaintiff's right of recovery would have been indisputable.² The court added, however, that the liability of such *quasi* corporations as "towns" is created and limited by general statutes. In this respect they differ from incorporated cities and towns, and to hold them responsible the act complained of must be within the powers of such town as defined by the general statute. If such act be not within the general scope of the authority conferred upon towns, the fact that the act complained of was authorized or subsequently ratified by a majority vote of the town cannot render it liable in damages.³ And a town is not liable for the unauthorized and illegal acts of its officers, even when acting within the scope of their duties.⁴ Such a town may, however, become so liable when the acts complained of were clearly illegal, but done under its express authority previously conferred or subsequently ratified.⁵

² Cumberland, etc. v. Portland, 62 Me. 505.

³ Morrison v. Lawrence, 98 Mass. 219.

⁴ Brown v. Venalhaven, 65 Me. 402; Small v. Danville, 51 Me. 356.

⁵ Woodcock v. Colais, 66 Me. 234.

CHARACTER EVIDENCE.

A person's character may be very different from his reputation, for character is what he is in himself and reputation is what he is supposed to be by others; but in the law of evidence this distinction is almost lost sight of, and *character* and *reputation* are generally treated as synonymous terms. Thus, Bouvier defines character as "the opinion generally entertained of a person derived from the common report of the people who are acquainted with him."¹ And Lord Erskine in one of his greatest speeches gave a similar definition. "Character," he said, "is the slow-spreading influence of opinion arising from the deportment of a man in society."² If the writer were to venture a definition of the term, he would say that character is the sum or result of a man's qualities and attributes, more par-

¹ Bouv. Law Dict., Tit. Character, 221.

² Rex v. Hardy, 24 St. Tr. 1070.

ticularly those of a moral nature, by which he is known and distinguished from and by his associates.³ A man's true character can be known with certainty to no one but himself and his God, perhaps not always even to himself. What it really is can only be judged by others from its outward manifestations, by the man's acts and conduct. When his conduct has been uniform and of such a nature as to establish his reputation among those that knew him for the possession of certain qualities, it is to be presumed that those qualities constitute his real character, and that he would not in the single case under investigation, by different and inconsistent conduct, show the possession of qualities or characteristics the very opposite of those established or indicated by the uniform tenor of his previous life.

Character evidence is admissible, according to Starkie: First, To afford a presumption that a particular party has or has not been guilty of a criminal act; secondly, To affect the damages in particular cases, where their amount depends upon the character and conduct of any individual; and, thirdly, To impeach or confirm the veracity of a witness."⁴ Let us consider the first and second of these in their order:

1. In criminal cases evidence of the general good character of the defendant is admissible wherever the object of the prosecution is to punish him for the crime, no matter whether the crime charged be a capital one or a mere misdemeanor, and irrespective of the nature of the other evidence, whether circumstantial or direct.⁵ It may be admitted, even in cases where, without it, no doubt would exist.⁶ The evidence must be of general character as distinguished from particular acts.⁷ So it must be that shown by general

reputation, and not the mere individual opinion of the witness.⁸ But the general character must, as a rule, at least, have some reference to the crime charged, and such as to make it unlikely or improbable that the defendant committed it.⁹ Thus, it is held that in prosecutions for larceny the evidence of character must be confined to character for integrity and honesty.¹⁰ So upon the trial of an indictment for assault,¹¹ or even for arson,¹² evidence of the reputation of the defendant for industry seems inadmissible. The effect of evidence of good character must depend largely upon the circumstances of the particular case; its weight is for the jury rather than for the court to determine; and it should be considered in connection with the other evidence in the case in determining the guilt or innocence of the accused.¹³

Except in peculiar cases where character is necessarily in issue, evidence of bad character of the accused cannot be given unless he first attempts to prove a good character.¹⁴ The rules on this branch of the subject are in most, if not all, respects the same as those governing the admissibility of evidence of good character in the first instance.¹⁵

Crim. Ev. *97; 2 Starkie Ev. *366; 1 Best Ev. §§ 257, 260; 1 Chitty Cr. L. 574; State v. Bulla (Mo.), 23 Cent. L. J. 596.

⁸ State v. King, 78 Mo. 555; Brownlee v. State, 13 Tex. App. 255; s. c., 5 Crim. L. Mag. 112; Rex v. Rowton, 34 L. J. (M. C.) 57; 10 Cox, 25.

⁹ Peake v. Conlan, 43 Ia. 294; State v. King, 78 Mo. 555; Walker v. State, 102 Ind. 502; s. c., 1 N. E. Rep. 856; 1 Greenl. Ev. § 54.

¹⁰ State v. Bloom, 68 Ind. 54; s. c., 34 Am. Rep. 247; Roscoe's Crim. Ev. *97.

¹¹ State v. Dalton, 27 Mo. 12.

¹² State v. Emery (Vt.), 7 Atl. Rep. 129.

¹³ Kistler v. State, 54 Ind. 400; People v. Doggett, 62 Cal. 27; Com. v. Leonard (Mass.), 4 N. E. Rep. 96; State v. Daley, 53 Vt. 442; Coleman v. State, 50 Miss. 484; Heine v. Com., 91 Pa. St. 145; Williams v. State, 52 Ala. 411; State v. Henry, 5 Jones (N. C.), 65; Epps v. State, 19 Ga. 102; People v. Garbutt, 17 Mich. 9; State v. Lindley, 51 Ia. 343; s. c., 1 N. W. Rep. 484. *Contra*: Com. v. Webster, 5 Cush. 293; s. c., 52 Am. Dec. 711; State v. Wells, 1 N. J. L. (Coxe) 424; Matthews v. State, 32 Tex. 117. And see 1 Best Ev. § 262; 2 Starkie Ev. *365. The cases last cited hold it available only in doubtful cases, but the later authorities are nearly unanimous in holding that it may be available in any criminal case, even to create a doubt.

¹⁴ Knight v. State, 70 Ind. 575; State v. Lapage, 57 N. H. 245; 3 Greenl. Ev. § 25.

¹⁵ It must be general as distinguished from particular acts: 1 Best Ev., § 261; Com. v. O'Brien, 119 Mass. 342; State v. Sterrett (Ia.), 22 N. W. Rep. 387; McCarty v. People, 51 Ill. 231. And it should, as a rule, be admitted to show bad character up to the time of the commission of the crime and not afterwards: White v.

³ For other definitions see Burrill's Circ. Ev. 525; Abbott's Law Dict., Tit. Character, and Kimmel v. Kimmel, 3 Serg. & R. 337.

⁴ 2 Starkie Ev. *365.

⁵ Peake v. Conlan, 43 Ia. 294; Stover v. People, 56 N. Y. 315; Hamilton v. People, 29 Mich. 105; Kistler v. State, 54 Ind. 400; Hoppes v. People, 31 Ill. 385; State v. Henry, 5 Jones (N. C.) 65; State v. Northrup, 48 Ia. 583; s. c., 30 Am. Rep. 408; 3 Greenl. Ev. § 25. But see Com. v. Webster, 5 Cush. 293; State v. Wells, 1 N. J. L. 424; U. S. v. Smith, 2 Bond, 323.

⁶ Heine v. Com., 91 Penn. St. 145; s. c., 3 Crim. L. Mag. 117; Remsen v. People, 43 N. Y. (4 Hand), 6; Carson v. State, 50 Ala. 135.

⁷ Jones v. State, 76 Ala. 8; s. c., 7 Crim. L. Mag. 377; Engelman v. State, 2 Ind. 91, 97; Thomas v. People, 67 N. Y. 218; Hirschman v. People, 101 Ill. 568; Roscoe's

In cases of homicide proof of the character of the deceased for quarrelsome and violence would often go as far toward gaining a verdict for the accused as proof of his own previous good character, and such evidence is now generally admitted in proper cases under certain rules and restrictions. A proper foundation must first be laid by showing that the accused was assailed, that he knew of the violent and dangerous character of the deceased, or that the circumstances, for other reasons, were such that the character of the deceased would aid in making a case of self-defense by showing the reasonable apprehension of danger on the part of the accused and his intent in doing the act.¹⁶ The evidence, as in other cases, must be of general character for violence or the like, rather than of particular acts,¹⁷ and must be confined to the particular trait material to the inquiry.¹⁸ So, in prosecutions for rape, evidence of the bad character of the prosecutrix for chastity is admissible under proper restrictions.¹⁹ It must also, according to the weight of authority, be confined to general character or reputation in that regard rather than to particular acts,²⁰ except that prior acts of sexual intercourse with the defendant may generally be shown.²¹

2. In civil actions the general rule in regard to the admissibility of character evidence is that the character of neither party can be inquired into unless put in issue by the nature of the proceeding itself,²² and it is

usually only in cases in which a party's character may affect the amount of damages that it is considered thus in issue.²³ There are cases, however, as, for instance, where character forms the inducement to an agreement, in which it is involved in the issue and may be shown.²⁴ So evidence of the plaintiff's good character has been held admissible, in actions for malicious prosecution, as a circumstance tending to show want of probable cause.²⁵ Mr. Greenwood, in an excellent leading article in 16 Cent. L. J. 202, has treated of the general subject of the "Admissibility of Evidence of Character in Civil Actions," and in so far as this article covers the same ground, it will only be necessary to cite a few of the leading cases and later authorities not referred to by him, leaving the reader to consult that article for additional authorities. But recent authorities on almost every point are not wanting.

In a civil action in which a party is charged with the commission of a crime, the rules governing the admissibility of character evidence in ordinary civil actions are applicable, rather than those controlling its admission in criminal prosecutions. Evidence of the defendant's good character or that of the party charged with the criminal act, is, therefore, not admissible, in such a case, to show that it is unlikely or improbable that he did the acts imputed to him.²⁶

State, 80 Ky. 487; Brown v. State, 46 Ala. 184. But see Com. v. Sackett, 22 Pick. 394.

¹⁶ Abernethy v. People, 101 Penn. St. 322; Dukes v. State, 11 Ind. 557; s. c., 71 Am. Dec. 370; State v. Hicks, 27 Mo. 588; Keener v. State, 18 Ga. 194; s. c., 63 Am. Dec. 269; Hurd v. People, 25 Mich. 405; Abbott v. People, 86 N. Y. 460; State v. Keene, 50 Mo. 357; Wharton's Crim. Ev. § 84.

¹⁷ State v. Elkins, 63 Mo. 159; Moriarty v. State, 62 Miss. 654.

¹⁸ Fahnstock v. State, 23 Ind. 231; 2 Bish. Crim. Proc. § 613.

¹⁹ 2 Bish. Crim. Proc. (1st ed.) § 914; Wilson v. State, 17 Tex. App. 525; Woods v. People, 55 N. Y. 515; Com. v. Kendall, 113 Mass. 210.

²⁰ State v. Forshner, 43 N. H. 89; s. c., 80 Am. Dec. 132; Com. v. Harris, 131 Mass. 336; Shartzer v. State, 63 Md. 149; s. c., 52 Am. Rep. 501; State v. Wilson, 16 Ind. 392; Richie v. State, 58 Ind. 355; Com. v. Regan, 105 Mass. 593; State v. Vaduals, 21 Minn. 382.

²¹ People v. Abbot, 19 Wend. 192; 2 Bish. Crim. Proc. § 915; State v. Cook, 22 N. W. Rep. 675.

²² Rogers v. Troost, 51 Mo. 470; Dudley v. McCluer, 61 Mo. 241; s. c., 27 Am. Rep. 273; Fowler v. Aetna Fire Ins. Co., 6 Cow. 673; s. c. 16 Am. Dec. 400; Gough

v. St. John, 16 Wend. 646; 1 Best Ev. §§ 257, 258; 1 Greenl. Ev. § 54; Att'y Gen. v. Bowman, 2 B. & P. 532. See also "Admissibility of Evidence of Character in Civil Actions," 16 Cent. L. J. 202, and authorities there cited.

²³ Berdell v. Berdell, 80 Ill. 604; Wright v. McKee, 37 Vt. 161; note to O'Bryan v. O'Bryan, 53 Am. Dec. 133, and authorities cited in note 22, *supra*.

²⁴ Von Storch v. Griffin, 77 Pa. St. 504; Cole v. Holliday, 4 Mo. App. 94; Foulkes v. Sellway, 3 Esp. 236; 16 Cent. L. J. 202. And see authorities cited in note to Burnham v. Cornwell, 63 Am. Dec. 543.

²⁵ Blizzard v. Hays, 46 Ind. 166; s. c., 15 Am. Rep. 291; Miller v. Brown, 3 Mo. 127; Woodworth v. Mills, 61 Wis. 44; s. c., 50 Am. Rep. 135.

²⁶ This subject is very fully discussed in a case just decided by the supreme court of Indiana. It was a suit upon an insurance policy, the defense being that the plaintiff burned his own property to get the insurance, and the court held, after a thorough review of the authorities, that the plaintiff could not show his previous good character: Continental Ins. Co. v. Jachinchein, 10 N. E. Rep. 636. See also for another satisfactory consideration of the question: Simpson v. Westenberger, 28 Kan. 756; s. c., 15 Cent. L. J. 429. To same effect: Gebhart v. Burkett, 57 Ind. 378; s. c., 26 Am. Rep. 61; Barton v. Thompson, 56 Ia. 571; s. c., 41 Am. Rep. 119.

Assault and Battery.—In actions of trespass for assault and battery, the plaintiff's character is not in issue and he cannot give evidence of his good character,²⁷ nor can the defendant, as a rule, show the plaintiff's bad character.²⁸ But it has been held that where there is evidence to show that the defendant acted in self-defense, evidence of the plaintiff's quarrelsome character, if known to the defendant at the time, is admissible the same as in a criminal prosecution.²⁹ The general good character of the defendant for peace and quiet is not in issue, and evidence thereof is not admissible.³⁰

Breach of Promise.—In actions for damages for breach of promise of marriage, the bad character of the plaintiff for chastity may be shown in mitigation of damages,³¹ and, if unknown to the defendant when the promise was made, evidence thereof may, when the fact is properly pleaded, be admissible even in bar.³² In some cases the admissibility of evidence of unchaste character has been confined to what occurred before the promise,³³ but in other cases evidence of unchasteness after as well as before the promise has been held admissible.³⁴ It seems that evidence of mere accusations, rumor or suspicions is not admissible,³⁵ and plaintiff's bad character is no defense where it is the result

of the defendant's own acts.³⁶ Where the plaintiff's character for chastity has been thus attacked, she may give evidence of her good character in that respect in rebuttal.³⁷

Divorce.—It has been held that in a proceeding by a husband for divorce, the wife cannot show her good character in rebuttal.³⁸ But this decision is criticised by Mr. Bishop,³⁹ and the contrary has been held by the Supreme Court of Missouri.⁴⁰ This view does not authorize the husband, in a proceeding for divorce on the ground of adultery, to prove the unchaste character of his wife.⁴¹

Libel and Slander.—There is considerable conflict among the authorities as to when and to what extent the plaintiff's character is in issue in actions for libel or slander. The weight of authority and the better reason would occur to uphold the rule that the bad character of the plaintiff may be shown in mitigation of damages.⁴² The evidence in such case must be confined to the general character of the plaintiff with respect to the particular species of immorality charged,⁴³ or at most to his general character for integrity and moral worth.⁴⁴ Misconduct in particular instances cannot be shown.⁴⁵ Nor, it seems, can the common rumor as to the particular act charged be shown.⁴⁶ Where the plaintiff

²⁷ Givens v. Bradley, 3 Bibb, 192; s. c., 6 Am. Dec. 646; Porter v. Seller, 23 Penn. St. 424.

²⁸ Ward v. State, 29 Ala. 53; Smithwick v. Ward, 7 Jones L., 64; s. c., 75 Am. Dec. 453; Corning v. Corning, 6 N. Y. 97; 1 Waterman on Trespass, § 272.

²⁹ Knight v. Smythe, 57 Vt. 529.

³⁰ Elliott v. Russell, 92 Ind. 526; Porter v. Seller, 23 Penn. St. 424; Lowell v. McDonald, 58 Miss. 251; Smithwick v. Ward, 7 Jones L., 64; s. c., 75 Am. Dec. 453.

³¹ Willard v. Stone, 7 Cow. 22; s. c., 17 Am. Dec. 496; Johnson v. Caulkins, 1 Am. Dec. 102; Cole v. Holliday, 4 Mo. App. 94; Kantzeler v. Grant, 2 Brad. (Ill.) 236; Sheahan v. Barry, 27 Mich. 217.

³² See authorities cited in note 24, *supra*. In Kniffen v. McConnell, 30 N. Y. 285, and Tompkins v. Wadley, 3 Thomp. & C. 424, it is held inadmissible in bar, unless pleaded; but in Von Storch v. Griffin, 77 Pa. St. 504, such evidence was held admissible under a plea of *non assumptit*. See also 3 Sutherland on Damages, 325.

³³ Johnson v. Smith, 4 Pittsb. 184; Snowman v. Wardwell, 32 Me. 275. And see Capehart v. Carradine, 4 Strob. 42.

³⁴ Burnett v. Simpkins, 24 Ill. 264; Sprague v. Craig, 51 Ill. 288.

³⁵ Willard v. Stone, 7 Cow. 22; s. c., 17 Am. Dec. 496; Baderlay v. Mortlock, Holt, 151; Capehart v. Carradine, 4 Strob. 42.

³⁶ Butler v. Eshleman, 18 Ill. 44. And see Felger v. Etzell, 75 Ind. 417.

³⁷ Sprague v. Craig, 51 Ill. 288; Haymond v. Saucer, 84 Ind. 3; 1 Wharton's Ev. § 51. But see Leckey v. Bloser, 24 Pa. St. 401, holding evidence of general good character not admissible in rebuttal of evidence of specific acts.

³⁸ Humphrey v. Humphrey, 7 Conn. 116. And see Berdell v. Berdell, 80 Ill. 604.

³⁹ 2 Bish. Marriage and Div. § 644.

⁴⁰ O'Bryan v. O'Bryan, 13 Mo. 16.

⁴¹ 2 Bish. Marriage and Div. *supra*; Washburn v. Washburn, 5 N. H. 196.

⁴² Douglass v. Tousey, 2 Wend. 352; s. c., 20 Am. Dec. 616; Stone v. Varney, 7 Metc. 86; Clark v. Brown, 116 Mass. 504; Buckley v. Knapp, 48 Mo. 152; Pease v. Shippen, 80 Penn. St. 513; Campbell v. Campbell, 54 Wis. 90; Townsend on Libel and Slander, § 406, and authorities there cited. And see Odgers on Libel and Slander, *304, and authorities there cited *pro* and *con*.

⁴³ Clark v. Brown, 116 Mass. 504; Wright v. Schroeder, 2 Cent. C. C. 548; Anthony v. Stephens, 1 Mo. 254; s. c., 13 Am. Dec. 497.

⁴⁴ Leonard v. Allen, 11 Cush. 241. Compare Eastland v. Cardwell, 4 Am. Dec. 668; Sayre v. Sayre, 1 Dutch. (N. J.) 235.

⁴⁵ Sawyer v. Elfert, 2 Nott & McCord, 511; s. c., 10 Am. Dec. 633; Hallowell v. Genette, 82 Ind. 554; McLaughlin v. Cowley, 131 Mass. 70.

⁴⁶ Peterson v. Morgan, 116 Mass. 350; Mahoney v. Belford, 132 Mass. 393; Anthony v. Stephens, 1 Mo.

iff's character has been attacked, he may generally rebut by evidence of good character.⁴⁷ But such evidence is not competent to rebut evidence in justification where his character is not attacked.⁴⁸ The defendant cannot show his own bad character in mitigation of damages.⁴⁹

Malicious Prosecution.—According to the weight of authority, evidence of the bad character or reputation of the plaintiff is admissible in mitigation of damages in actions for malicious prosecution.⁵⁰ So the current of authority seems to favor the admission of evidence of the good or bad character of the plaintiff upon the question of probable cause.⁵¹ The bad character of the defendant for peace and quiet cannot be shown in chief, even though the original prosecution grew out of a personal collision between the parties.⁵²

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254; s. c., 13 Am. Dec. 497, and authorities cited in note, page 499. But on the other hand, a number of authorities hold generally current rumors and reports admissible in mitigation: *Treat v. Browning*, 4 Conn. 408; s. c., 10 Am. Dec. 156; *Henson v. Veatch*, 1 Blatchf. 369, and authorities cited in note to *Alderman v. French*, 11 Am. Dec. 130.

⁴⁷ *Downey v. Dillon*, 52 Ind. 442; *Sheehy v. Cokley*, 43 Ia. 183. And see *Odgers on Libel and Slander*, *298, note b, where the authorities are cited and distinguished.

⁴⁸ *McRee v. Fulton*, 47 Md. 493; s. c., 28 Am. Rep. 465; *Miles v. Vanhorn*, 17 Ind. 245; s. c., 79 Am. Dec. 477; *Houghaling v. Kilderhouse*, 1 N. Y. 53. *Contra*: *Williams v. Haig*, 3 Rich. Law, 362; s. c., 45 Am. Dec. 774.

⁴⁹ *Hastings v. Stetson*, 130 Mass. 76.

⁵⁰ *O'Brien v. Frasier*, 47 N. J. L. 349; s. c., 54 Am. Rep. 170; *Fitzgibbon v. Brown*, 43 Me. 169; *Bacon v. Towne*, 4 Cush. 217; 1 Whart. Ev. § 54; *Rosenkranz v. Barker* (Ill.), 3 N. E. Rep. 93; 3 Suth. Dam., 708.

⁵¹ *Woodworth v. Mills*, 61 Wis. 44; s. c., 50 Am. Rep. 135; *Blizzard v. Hays*, 46 Ind. 168; s. c., 15 Am. Rep. 291; *Israel v. Brooks*, 23 Ill. 575; *Rodriguez v. Tadmire*, 2 Esp. 721; *Pennsylvania Co. v. Weddle*, 100 Ind. 138; *Ross & Co. v. Innis*, 35 Ill. 487; s. c., 85 Am. Dec. 373; *Martin v. Hardesty*, 27 Ala. 458; s. c., 52 Am. Dec. 773. *Contra*: *Gregory v. Thomas*, 2 Bibb, 286; s. c., 5 Am. Dec., 608; *Newsome v. Carr*, 2 Starke's Rep. 69; 1 Whart. Ev. § 47.

⁵² *Walker et al. v. Pittman* (Ind.), 9 N. E. Rep. 175.

HOMICIDE — SELF-DEFENSE — BURDEN OF PROOF — SHERIFF — MISDEMEANOR IN OFFICE.

PEOPLE V. COUGHLIN.

Supreme Court of Michigan, April 23, 1887.

1. *Homicide—Self-defense—Burden of Proof.*—It is error, in a case of homicide, to charge the jury that, if the defendant attempts to establish the plea of self-defense, it is incumbent upon him to prove such facts as will establish that defense. On the contrary it is incumbent on the prosecution to prove such facts as establish his guilt as charged in the indictment, and exclude all presumption of his innocence.

2. *Sheriff—Misdemeanor in Office.*—That a sheriff entered the complaint against the defendant, testified as a witness for the prosecution, and afterwards had charge of the jury upon the trial, do not constitute a misdemeanor in office, nor entitle the defendant to a new trial.

CHAMPLIN, J., delivered the opinion of the court:

Respondent was convicted of manslaughter, and sentenced to be confined in the State prison at Jackson at hard labor for the period of thirteen years. The circuit judge charged the jury that, in cases where the respondent seeks to justify his acts of killing as done in self-defense, the burden of proof is upon himself to establish the killing to have been done in self-defense. This was error. In civil cases the burden of proof is generally upon the party who affirms the existence of facts necessary to make out his case. In criminal cases, however, the burden of proof is upon the prosecutor to show that the accused is guilty of the offense charged. The charge made against respondent in this case could not be made out unless the testimony should exclude the idea of self-defense beyond a reasonable doubt. Consequently it was incumbent upon the people to show such facts and circumstances as convinced the jury that the killing was not done in self-defense.

It also appears that the sheriff entered the complaint upon which the respondent was arrested, and also was a witness in the case in behalf of the people. He was also the officer who had the jury in charge during their deliberations, and this is alleged as error. We can see no impropriety in these facts. The sheriff is a public officer and conservator of the peace, and it does not appear that he acted in the character of a private prosecutor.

The judgment must be reversed and the prisoner remanded to the custody of the sheriff of Chippewa county.

NOTE.—The rule stated in the principal case that, in a prosecution for homicide, the testimony should exclude the idea of self-defense beyond a reasonable doubt, does not accord with the doctrine of the earlier authorities.¹

¹ 4 Bla. Com. 201; *Foster's Crown Law*, 255; *Common*

In an Ohio case the court said: "The gist of the instruction which the court refused was that the burden was on the State to show beyond a reasonable doubt by affirmative evidence, otherwise than by the presumption arising from the homicide, that the fatal wound was not inflicted by the defendant in self-defense. The proposition contained in this instruction would not only destroy the presumptions arising from the homicide, but by its adoption what is recognized in the books as a defense, would cease to be such in any just sense, because the burden would be cast on the State of disproving its existence in order to support the indictment."²

And in New York it has been said: "The people in every case of homicide must prove the *corpus delicti* beyond a reasonable doubt, and if the person claims a justification he must take upon himself the burden of satisfying the jury by a preponderance of evidence. He must produce the same degree of proof that would be required if the blow inflicted had not produced death and he had been sued for assault and battery and set up a justification. When a man takes human life, upon which the law sets a high value, it is not sufficient for him to raise a reasonable doubt whether he was justifiable or not, but he must go one step further and give satisfactory evidence that he was justified. This rule is sufficiently humane to the prisoner and at the same time gives some protection to human life."³

In an earlier case in New York,⁴ it was held that the accused must establish the necessity of the killing beyond a reasonable doubt, but the instruction was clearly wrong, and its doctrine was overruled by the case above cited. In those States where the burden of proof in cases of self-defense is upon the accused, it is only necessary that the defense be established by a preponderance of evidence, as in civil cases.⁵

The rule of the principal case is further opposed by the analogy of many cases where it has been sought to lower the grade of the homicide.⁶

Where the evidence introduced by the prosecution tends to show that the accused may have acted in self-defense, the burden is on the prosecution to remove all reasonable doubts upon the subject.⁷

The argument for the rule of the principal case is strongly stated in a Colorado case: "It is but fair to the jury, upon whom is cast the grave responsibility of determining the prisoner's guilt, as well as his fate in respect to life or liberty, that all the facts comprising the *res gesta* should be spread before them; and when we consider that every man is presumed to be innocent until his guilt is made to appear beyond a reasonable doubt, and that the burden of proof to this extent rests upon the State, it is but fair to the prisoner that the whole transaction, and not a select part of it, should be before the jury to be considered by

them as the evidence in the case, and not as the evidence of contesting parties in the case. * * * Usually the character of the crime is demonstrated by the same evidence which establishes it; and if the accused is compelled to give in evidence some of the attending circumstances, the same rule should be applied as if the whole had been frankly presented by the State. It may, therefore, be laid down as the established doctrine of this State that, as to all facts in evidence properly constituting part of the *res gesta*, they are to be considered by the jury in passing upon the question of guilt or innocence, without discrimination as to the rules of evidence, whether introduced by the prosecutor or the defendant. * * * The rule is that, when the defense set up is in itself purely extrinsic, the allegations of the indictment not being denied, it is necessary that such defense be sustained by a preponderance of proof."⁸

In North Carolina, it has been said that the facts necessary to make a case of self-defense must be proved "to the satisfaction of the jury."⁹

The analogy to the defense of insanity to that under consideration is too doubtful to make cases involving the former of authority in this connection.¹⁰

Lincoln, Neb.

CHAS. A. ROBBINS.

² Kent v. People, 8 Colo. 563; s. c., 9 Pac. Rep. 852. See also State v. Porter, 34 Iowa, 181; Tweedy v. State, 5 Id. 433; Commonwealth v. McKie, 1 Gray, 61; State v. Patterson, 45 Vt. 308; State v. Cross, 68 Iowa, 180.

³ State v. Willis, 63 N. C. 26.

¹⁰ Kent v. People, *supra*.

INSURANCE—ACCIDENT INSURANCE—PROOF OF DEATH—AGENT—WAIVER—FORFEITURE.

TRAVELERS' INS. CO. OF HARTFORD V. EDWARDS.

Supreme Court of the United States, May 27, 1887.

Agent—Proof of Death—Waiver—Forfeiture.—If the agent of an accident insurance company, who has acted for the company in the matter of the policy in question, undertakes to furnish to the home office proofs of the death of the assured, and by his neglect and delay and the delay in the home office, the proofs are not put into proper form for a considerable period, the company will be held by his delay and its own to have waived the prompt and immediate notice of the death required by the policy, and cannot enforce a forfeiture on that ground.

Mr. Justice MILLER delivered the opinion of the court:

This is a writ of error to the circuit court of the United States for the northern district of New York. The defendant in error, Catherine L. Edwards, obtained a judgment in the circuit court for the sum of \$5,387.50 against the Travelers' Insurance Company of Hartford, Connecticut, on a policy of insurance upon the life of her brother, Frank Edwards. The suit was originally instituted in the supreme court for Ontario county, New York, from whence it was removed by the plaintiff in error into the circuit court of

wealth v. Drum, 58 Pa. St. 9; People v. Stonecipher, 6 Cal. 405; State v. Conally, 3 Oreg. 69; United States v. Crow Dog, 14 N. W. Rep. 437; s. c., 3 Dak. —; People v. Tidwell, 12 Pac. Rep. 63; s. c., 4 Utah, —.

² Silvis v. State, 22 Ohio St. 90.

³ People v. Schryver, 42 N. Y. 1.

⁴ Patterson v. People, 46 Barb. 425.

⁵ Silvis v. State, *supra*; State v. Conally, *supra*; United States v. Crow Dog, *supra*; Alexander v. People, 96 Ill. 96; People v. Knapp, 12 Pac. Rep. 793; s. c. 60 Cal. —; Whart. Hom. (2d ed.) § 659.

⁶ Legg's Case, Kelyng. 27; King v. Queby, 2 Ld. Raym. 1498; King v. Greenacre, 8 Car. & P. 42; Commonwealth v. York, 9 Metc. 28.

⁷ Head v. State, 44 Miss. 731; Alexander v. People, 96 Ill. 96.

the United States for that district. The record of a long trial before a jury is presented to us in a stenographic report of the proceedings there, which has been adopted by the parties and by the judge trying the case as a bill of exceptions. It is obvious from this paper that the main controversy before the jury was upon a question of suicide set up by the defendant company, but the brief of the plaintiff in error, and his assignment of errors, eliminates all this, and relies upon the defense stated by the brief in the following language: "Trial was had before a jury, and a verdict was rendered for the plaintiff, and the questions now arising are, whether the plaintiff below complied with those conditions of the policy which required written notice to the company of the death of the deceased, and proofs of the same within seven months thereafter; whether the action was prematurely brought by reason of the plaintiff's failure to comply with such conditions of the policy before bringing suit; and whether certain details of evidence bearing upon the foregoing questions were properly admitted against the objection of the company."

The assignments of error correspond with this statement, and are given *verbatim*, as follows: "The circuit court erred: (1) In that it admitted testimony relating to the acts and statements of Mr. E. M. Phillips, the local agent of the insurance company at Southbridge, Mass., with reference to the notice of death to be given by the defendant in error to the insurance company, and the delivery and reception of the proofs of death, as binding the company and affecting the rights and duties of the parties to the contract of insurance, it not appearing that Phillips had authority to represent or bind the company in this regard. Record, 22, 23, 28, 29, 58, 77. (2) In that the court charged the jury as follows: 'If, upon this evidence, you find that, upon the third of July, or during the seven months limited by the contract, the proofs of death which have been referred to were served upon Mr. Phillips, who was held out by this company to be its agent, under the circumstances detailed in this case—that is, if you believe that he stated to the representatives of this, assured that the proofs were to be left with him, and served upon him, and not upon the company—then I say, for the purposes of this case, that that was sufficient service upon the company, within the provisions of the contract.' Charge, 79. (3) In that it refused to rule that the defendant in error had not furnished evidence of the notice of death required by the policy, inasmuch as there was no evidence that any notice in writing was given to the company after the death of Edwards or that proofs of death were furnished to or served upon the company, and within seven months of his death, as required by the policy. Pages 29, 77, 78. (4) In that the court declined to charge the jury as follows: 'That, under the undisputed evidence in this case, the jury must find a verdict for the defendant under the facts alleged in the second separate

answer.' Page 82; Second Separate Answer 3. (5) In that it refused to rule that the suit was prematurely brought, because the plaintiff below had not at the time furnished due notice and proofs of death as required by the policy, and ninety days thereafter had not elapsed. Page 78."

The language of the policy upon this point is as follows: "That, in the event of the death of the person insured, then the party assured, or his or her legal representatives, shall give immediate notice in writing to the company at Hartford, Conn., stating the time, place, and cause of death, and shall within seven months thereafter, by direct and reliable evidence, furnish the company with proofs of the same, giving full particulars, without fraud or concealment of any kind."

The answer of the defendant alleges that the plaintiff did not give to the defendant, at Hartford or elsewhere, immediate notice in writing of the death of the said insured; and that defendant did not receive from said plaintiff notice of the death of the said Frank Edwards until the tenth day of February, 1883, his death occurring on June 19, 1882; and that the plaintiff did not, within seven months after the last-mentioned date, give notice in writing to the defendant, at Hartford or elsewhere, nor in the manner and form as required by the policy, and has not delivered to or furnished the defendant with proofs of the death of said Frank Edwards with full particulars, but, on the contrary, failed and neglected to do so.

The evidence on this subject shows substantially that Phillips was the agent at Southbridge, Massachusetts, of the defendant corporation; that the application on which the policy issued was forwarded by Phillips to Hartford, the policy returned to him, and by him delivered to Edwards; that the receipt for the premium, signed by Rodney Dennis, secretary of the company, declared in the body of it that the policy would "not be valid until the above stated premium has been received during the life-time of said Frank Edwards, and this receipt countersigned by E. M. Phillips, agent of this company at Southbridge, Mass." On the margin of the receipt was the statement that "the agent who receives the within premium should countersign this receipt, and invariably state over his signature the date at which the payment is made to him." Across its face was written: "The within premium received and this receipt countersigned by me this twenty-fourth day of May, 1882. E. M. Phillips, agent at Southbridge, Mass." It was further indorsed: "All policies and agreements made by this company are signed by its president or secretary. No other person can alter or waive any of the conditions of the policies, or issue permits of any kind, or make agreements binding upon said company. Rodney Dennis, secretary."

The evidence further shows that, on the day after the death of Edwards, a gentleman named Bartholomew, who was a friend, and probably

the attorney, of the family, met Mr. Phillips in the street; that Phillips said to him in regard to Edwards, whose death was then just known, that he was insured in the Travelers' Life Insurance Company, and that he (Phillips) was going to Hartford. The witness Bartholomew testifies: "I asked him if that was so. I didn't at that time know that he had a policy in that company. He said he was going to Hartford, and would give to the company the notice of his death, and would procure the blanks for the proofs of loss. I asked him if it would do as well for him to give the notice to the company in that way as for any party interested. He said it would, and I think that was all that was said then; saw Mr. Phillips some days after that; met him somewhere in the street—can't tell where—and he told me he had been to Hartford, and had procured the blanks, and that if I would come to his office he would deliver them to me." The other evidence in the case, including that of Mr. Dennis, the secretary of the company, leaves no doubt of the fact that Mr. Phillips informed him of the death of Edwards, and of all that was known about it at that time, though very little was known in Southbridge, as he died in Boston. Mr. Dennis gave Phillips the blanks for the regular proofs of death, which the company always required, which blanks contained instructions as to how these proofs should be made out, and what should be contained in the affidavits directed by the company to be made. Mr. Phillips delivered these papers to Bartholomew within a day or two after his visit to Hartford, and said to him: "When you get them completed I want you to return them to me." This Bartholomew swears to positively, and Phillips, while he does not recall the direction to return them to him, says that he is not willing to swear to the contrary. These affidavits were made out and delivered to Phillips on the third day of July. Through some neglect on his part they remained in his office beyond the period of seven months, which the policy fixed as the time within which they should have been delivered at the Hartford office. His attention having been brought to these papers in some manner, not particularly described, he called upon Bartholomew with them, and stated that they were not sufficient in regard to the particulars of the death of Edwards. They were afterwards returned to Phillips, who forwarded them to the company about the seventh day of February, 1883, which the company now insists was too late.

The whole of the testimony upon this narrow issue turns upon the question whether the absence of a written notice of the death of the insured, when the company had full notice of it through Phillips, their agent, and whether the delivery of the proofs of death to the company after the expiration of the seven months, although they had been delivered to the agent Phillips within the time required, shall defeat a recovery.

The opinion of the judge who tried the case, on

a motion for a new trial, states the facts as he understood them, and, as we think, with accuracy, together with his view of the law of the subject, so well that we transcribe it here: "The facts are as follows: The insured died June 19, 1882. A day or two afterwards, E. M. Phillips, who is described in the receipt referred to as 'agent of this company at Southbridge, Mass.,' met one of the family of the deceased on the street, informed him that he was going to Hartford, and would give the company the requisite notice, and would procure the necessary blanks for the proofs of death. He did go to Hartford on or about the twenty-first of June, saw the secretary of the company, gave him notice of the death, stating all the particulars which he then knew, and obtained the blank proofs. On his return he handed the blanks to one of the plaintiff's representatives, saying at the time, 'When you get them completed I want you to return them to me.' They were filled out and delivered to him July 3, 1882. He retained them for several months, and then returned them to a brother of the plaintiff, saying that they were incomplete, and demanded additional information. On the twenty-ninth of January, 1883, they were again delivered to Phillips, and by him sent to the company on or about the seventh of February. The company, in acknowledging their receipt, made no objection that they were received too late, and retained them in its possession. They were produced on the trial by the defendant's counsel. It must be held that, if the plaintiff has not followed the contract literally in these particulars, it was because she was misled by the course of the defendant, and that the defendant is not now in a position to take advantage of the plaintiff's omission, having waived a strict performance of the contract." See *Edwards v. Travelers' Ins. Co.*, 22 Blatchf. 225, 20 Fed. Rep. 661.

Without deciding whether this notice to Phillips of the death of Edwards would have been a sufficient compliance with the contract requiring a written notice of the death to be given to the company at Hartford, if it had been attempted to comply with the condition in that manner, and without deciding whether, if the proofs of death had been made out and delivered to Phillips, with no more in the case than that, it would have been a sufficient compliance with that provision, we are of opinion that the whole course of dealing by the company with Phillips, and with the plaintiff below, establish the proposition that the company recognized Phillips as its agent for these purposes, and so acted upon his information of the death of Edwards as to accept that as sufficient notice, and to constitute him their agent for the purpose of receiving the proofs of death. Phillips went to the office of the company in Hartford. He there gave the information of the death of Edwards to the company, with such particulars as were then known in regard to the incidents of his death. The acting officer of the company, the man who, in his own testimony, de-

scribes himself as having charge of claims for losses by death, then furnished him with the requisite blanks for the further proof required by formal affidavits of the parties. The officer knew that Phillips was treated by the insured as the agent of the company for giving this notice, he accepted that notice, he acted upon it, and he intrusted Phillips, who was an agent of the company, and had been so for ten years or more, with the forms of affidavits necessary to show what the company required to be proved in order to justify them in paying the money upon the policy. Phillips undertook this business, delivered these blank affidavits, and stated to the plaintiff's agent that they were to be returned to him when completed. They were so returned to him, but, without sending them to the company, after keeping them a long time in his possession, he again gave them to the plaintiff's agent, with the declaration that they were imperfect, and suggested further proofs.

Soon after this they were returned to him, though it is not stated whether any further proofs were made out or not, and he then forwarded them to the company. He evidently considered himself as the agent of the company when he required additional proofs. As confirmatory of this, the evidence shows that the company received the proofs without objection and when, some time afterwards, a brother of the plaintiff made an inquiry of the company in regard to them, they acknowledged that they had received them on the tenth day of February, but made no objection that it was too late. They also acknowledged the receipt of "papers in the case of Frank Edwards" in the following letter, dated February 9, 1883:

"E. M. Phillips, Esq., Ag't., Southbridge, Mass.—DEAR SIR: Your letter of the seventh inst., with papers in the case of Frank Edwards, at hand. We understand a chemical analysis of his stomach was made. We should like a full report of the analysis, certified to by the chemist who made it. Yours, truly,

"RODNEY DENNIS, Sec'y."

In this there was no hint that the papers were received too late, or that no sufficient notice had been given, but simply the expression of a desire for further information with regard to the actual facts of the case, which would have been useless if the company intended to rely upon the failure to give this notice in time. Afterwards, on March 10, 1883, S. K. Edwards, "for Katy L. Edwards," the plaintiff below, wrote to the company, asking for the date of proof of death of Mr. Frank Edwards, and when it was received at the office. To this the following reply was made:

"THE TRAVELERS' INSURANCE CO.,
CLAIM DEPARTMENT,
HARTFORD, CONN., March 13, 1883."

"S. K. Edwards, Southbridge, Mass.—DEAR SIR: In reply to yours of tenth inst., would say that we received a letter from agent Phillips, dated February 7, 1883, wherein he writes: 'I

found the inclosed upon my table on my return home, and forward the same.' The inclosed were incomplete proof papers relating to the death of Mr. Frank Edwards, and we acknowledged the receipt of same February 9th, asking for a full report of the analysis of Edward's stomach, the report to be certified by the chemist who made the analysis. We have no further intelligence respecting the matter.

Yours, truly,

"RODNEY DENNIS, Sec'y."

On March 20th, S. K. Edwards, on behalf of his sister, again wrote to the company making inquiry if February 9th was the first time they had the proofs of the death of Frank Edwards, to which the following reply was made:

"MARCH 21, 1883.

"S. K. Edwards, Esq., Southbridge, Mass.—DEAR SIR: Your letter of the twentieth inst. is at hand. We received the incomplete proofs of death, to which we alluded in our letter of thirteenth inst., on the tenth of February for the first and only time. We have only received them once.

Yours, truly,

"RODNEY DENNIS, Sec'y."

During all the correspondence which passed upon this subject, Mr. Dennis, the officer of the company, nowhere intimates that these proofs came too late, or that they were rejected by the company, but the only complaint made was, that he had not received the chemical analysis of the contents of the stomach. Under all the circumstances of this case, we are of opinion that the company treated Phillips as their agent for the purpose of the early notice of the death of Edwards, and also of the receipt of the final proofs thereof, and that it is too late for them now to undertake to defeat this action upon the ground that he was not their agent for any of these purposes. We do not deem it necessary to go into a critical examination of the authorities upon the questions so often raised of the powers of agents of this class. We simply hold that, whether upon the face of the policy, and the receipt with its indorsements, taken alone, Phillips can be held to have been the agent of the company to whom the notices in question could be properly delivered or not, that the action of the company upon Phillip's communications to its secretary at Hartford of the information of the death of Edwards, and its delivery to him of the blank affidavits and forms which it required to be filled up, together with the subsequent correspondence, show conclusively that the company considered Phillips as its agent throughout the transaction with regard to these notices, and it is, therefore, bound by what he did.

The judgment of the circuit court is affirmed.

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1. ABATEMENT—Revivor—Death of Party.—In Kentucky, when a suit has abated by the death of the defendant, an order of revivor cannot be made on motion of the plaintiff within six months after the qualification of the representative of the deceased. Construction of Kentucky statutes on this subject.—*Thompson v. Williams*, Ky. Ct. App., June 11, 1887; 4 S. W. Rep. 914.

2. ADVANCEMENTS—Debt of Son-in-law.—Where a party pays the bonds of his son-in-law, on which he was a surety, declaring it to be an advancement, and places them in a package of receipts of his children and sons-in-law, to whom he had made advancements, indorsing thereon that they would show as receipts, such payments will be considered to be advancements to his daughter.—*McDearman v. Hodnett*, S. C. App. Va., April 28, 1887; 2 S. E. Rep. 643.

3. APPEAL—Accounting—Assignee.—An order directing an accounting by the assignee of an insolvent debtor, who has qualified, but has failed to account in the three months prescribed, is not appealable.—*Rosenthal v. Levy*, S. C. Cal., June 29, 1887; 14 Pac. Rep. 368.

4. APPEAL—Bill of Exceptions—Abbreviation.—An abbreviation of documentary evidence in a bill of exceptions is not admissible except by consent of parties.—*Fagg v. Donaldson*, S. C. Ga., Feb. 8, 1887; 2 S. E. Rep. 639.

5. APPEAL—Bond—Title of Case.—An appeal bond is not rendered ineffective merely because in its indorsement the name of the case is not correct.—*Herrlich v. McDonald*, S. C. Cal., June 24, 1887; 14 Pac. Rep. 357.

6. APPEAL—Bond—Practice.—On an appeal taken in term, the trial court must fix the penalty of the bond and approve the sureties. The appellate court will not

order an additional bond, unless the situation of the parties has changed.—*Midland R. Co. v. Wilcox*, S. C. Ind., June 29, 1887; 12 N. E. Rep. 513.

7. APPEAL—Certiorari—Supreme Court—General Term.—Where the supreme court at general term in a case of certiorari reverses the inferior tribunal on the facts, its action is not reviewable in the court of appeals.—*People v. Board of Fire Commrs.*, N. J. Ct. App., June 21, 1887; 12 N. E. Rep. 596.

8. APPEAL—Charge—Bill of Exceptions.—The charge of the court, given orally, cannot be reviewed on exceptions, in Utah, unless it is brought up by the bill of exceptions or by statement settled and signed by the trial judge.—*People v. Pettit*, S. C. Utah, June 29, 1887; 14 Pac. Rep. 357.

9. APPEAL—Damages—Reduction.—Where a judgment cannot stand on account of an error at the trial affecting the amount of the recovery, a right to recover substantial damages at a future trial should not, in general, be barred by reducing the judgment to a nominal sum, instead of reversing it.—*Stout v. McMasters*, S. C. Minn., July 8, 1887; 33 N. W. Rep. 558.

10. APPEAL—Injunction—Substantial Right.—Where, on a bill filed to enjoin the sheriff from selling property levied on as belonging to A, when in truth it belongs to a partnership of A and B, and for an accounting, a finding that it is partnership property can be appealed from as affecting a substantial right, but a refusal to dissolve the temporary injunction cannot be appealed from.—*Putnam v. Putnam*, S. C. Ariz., July 12, 1887; 14 Pac. Rep. 336.

11. APPEAL—Instructions—Exceptions.—Errors in instructions, when no exceptions are taken, are not ground for a new trial.—*Arneson v. Thorstad*, S. C. Iowa, June 23, 1887; 33 N. W. Rep. 607.

12. APPEAL—Justice's Court—Record—Payment into Court.—The entry by a justice on his docket after judgment that the parties had settled the dispute is not conclusive, and cannot deprive the plaintiff of his right to appeal. Nor is he debarred of that right by the payment of the judgment into court by the defendant.—*Scott v. Superior Court*, S. C. Cal., June 29, 1887; 14 Pac. Rep. 374.

13. APPEAL—Procedure—Statute.—An appeal taken in California from the order of a probate court, setting aside the account of an administrator before such order is ordered on the minute book, is premature and invalid, as the statute directs that appeals must be taken within a prescribed period after such entry on the minute book.—*Rose's Estate*, S. C. Cal., June 24, 1887; 14 Pac. Rep. 369.

14. APPEAL—Rehearing.—A rehearing will not be granted in a case decided first in department and then in banc.—*Hegard v. Ins. Co.*, S. C. Cal., June 22, 1887; 14 Pac. Rep. 359.

15. APPEAL—Record.—The record upon appeal must show affirmatively that the jury was duly sworn; otherwise the conviction cannot be sustained.—*Biles v. State*, Tex. Ct. App., June 1, 1887; 4 S. W. Rep. 902.

16. APPEAL—Record—Review.—Where all the evidence on the subject is not preserved in the record, the appellate court cannot interfere with the finding of the lower court as to the amount due the plaintiff in a mechanic's lien case.—*Townsend v. Welch*, S. C. Iowa, June 22, 1887; 33 N. W. Rep. 602.

17. APPEAL—Review—Previous Case.—Though all the evidence may have been before the appellate court before in a different case, yet all pertinent evidence must be again considered in the pending case.—*Nauman's Appeal*, S. C. Penn., June 1, 1887; 9 Atl. Rep. 934.

18. APPEAL—Transcripts.—Where both parties appeal, separate transcripts must be filed.—*Perry v. Adams*, S. C. N. Car., May 21, 1887; 2 S. E. Rep. 639.

19. APPEAL—Verdict—Weight of Evidence.—A verdict so clearly wrong as to induce the belief that it was found through mistake or by some means not apparent

on the record, will be set aside on appeal.—*Sandwich M. Co. v. Feary*, S. C. Neb., July 6, 1887; 33 N. W. Rep. 485.

20. APPEAL—Vexatious—Compensatory Damages.—In an action for an annoying trespass, where the plaintiff recovered only nominal damages, and the defendant took an annoying appeal, the supreme court awarded compensatory damages in addition to the ordinary costs.—*Fisher v. Dowling*, S. C. Mich., June 16, 1887; 33 N. W. Rep. 521.

21. ARBITRATION—Award—Acceptance.—When arbitrators make a verbal award, and the parties ratify it by entering into a written agreement, they are bound by the award, and cannot sue on the original items of account without showing adequate cause for setting the award aside.—*Bentley v. Davis*, S. C. Neb., June 9, 1887; 33 N. W. Rep. 473.

22. ASSIGNMENT—Instrument—Sufficiency—Contract—Part of Price Retained.—A party holding a claim against a railroad company can assign it, by an instrument to that effect, addressed to the president of that company. One who holds a claim against a company for a proportion, as fifteen per cent. of the entire amount to be paid for work to be done under a contract, can assign such reserved portion as a distinct demand.—*Adler v. Kansas City, etc. Co.*, S. C. Mo., June 6, 1887; 4 S. W. Rep. 917.

23. ATTACHMENT—Affidavit—Partnership.—An attachment, wherein the allegation in the affidavit that both of the defendants, whose partnership property is attached, are about to move their property out of the State, is not sustained, cannot be upheld on the ground that one of the partners has conveyed his separate property with intent to defraud his separate creditors, but in such case, the separate property of such member may be attacked.—*Evans v. Virgin*, S. C. Wis., June 1, 1887; 33 N. W. Rep. 569.

24. ATTACHMENT—Affidavit—Judgment—Execution—Sale.—Where property is attached and the defendant is properly notified by publication, the judgment cannot be assailed collaterally because the affidavit for attachment was defective. Where the attached property is sold under the judgment, the deed will be upheld against a purchaser from the defendant suing in ejectment, though the judgment was not special against the property and though there was not a special execution against it.—*Burnett v. McCluey*, S. C. Mo., June 6, 1887; 4 S. W. Rep. 694.

25. ATTACHMENT—Non-residence—Intervention—Effect.—When, in an attachment for non-residence, a non-resident intervenor appears, and the verdict is in his favor, the attachment suit, in the absence of proof that the debtor has other property within the jurisdiction of the court, should be dismissed.—*Simonds v. Pearce*, U. S. C. C. (S. Car.), April 10, 1887; 31 Fed. Rep. 137.

26. ATTACHMENT—Plea in Abatement—Attorney—Verification.—Defendant's attorney can, by leave of court, file the plea in abatement in attachment and also make the affidavits which need not show his knowledge or means of knowledge.—*Irwin v. Evans*, S. C. Mo., June 6, 1887; 4 S. W. Rep. 693.

27. ATTORNEYS—Buying Claims—Defense—Notice.—A defense that the plaintiff, an attorney, bought the due-bill sued on with intent to sue thereon contrary to the statute, is not admissible, unless notice of that defense was filed with the plea.—*Randall v. Baird*, S. C. Mich., June 16, 1887; 33 N. W. Rep. 506.

28. ATTORNEY—Disbarment—False Affidavit.—Where an affidavit containing false statements is subscribed by an attorney, who knows the statement to be false, he will be disbarred therefor, though no formal affidavit is administered.—*In re Keegan*, U. S. C. C. (Colo.), May 14, 1887; 31 Fed. Rep. 129.

29. BANKRUPTCY—Homestead—Exemption.—A homestead set apart under the bankrupt act is protected against any fiduciary debt which has shared in the distribution of the estate in the hands of the bank-

rupt and his grantees.—*Simpson v. Houston*, S. C. N. Car., May 27, 1887; 2 S. E. Rep. 651.

30. BILLS AND NOTES—Acceptance—Consideration.—A payee of a bill of exchange may sue the acceptor thereof, though, in reality, but not in terms, it was given to him for collection, a lack of consideration between the drawer and payee being no defense to the acceptor. Though the acceptance was given on the payee's promise to make certain payments, his failure so to do is no defense to his suit on the note against the acceptor, so long as he remains legally obligated by his promise.—*Vanstrum v. Liljengren*, S. C. Minn., July 8, 1887; 33 N. W. Rep. 555.

31. BILLS AND NOTES—Theft—Bona Fide Holder.—In an action by a former holder of negotiable paper against a subsequent purchaser, the burden is on the defendant to prove he is, or has succeeded to the rights of, an innocent holder, and where it is proved he took it after maturity, it will not be presumed that any prior holder succeeding the thief took it before maturity.—*Northampton Nat. Bank v. Kidder*, N. Y. Ct. App., June 7, 1887; 12 N. E. Rep. 577.

32. BONDS—Appeal—Highways.—Each appeal in proceedings to lay out a highway is independent of the other, and a bond given on appeal before the county judge, conditioned to pay all costs, provided the determination of said supervisors is not reversed, is void.—*State v. Hoels*, S. C. Wis., June 1, 1887; 33 N. W. Rep. 597.

33. BRIDGES—Construction—County Commissioners.—Under Iowa laws, the power of county commissioners to erect bridges applies to bridges across streams in cities.—*Oskaloosa S. E. Works v. Pottawattamie County*, S. C. Iowa, June 22, 1887; 33 N. W. Rep. 605.

34. CARRIERS—Connecting Lines—Liability.—Carriers may contract to carry goods beyond their line, or carriers with connecting lines may become joint carriers.—*Swift v. Pacific M. S. Co.*, N. Y. Ct. App., June 7, 1887; 12 N. E. Rep. 583.

35. CHATTEL MORTGAGE—Levy of Execution—Mortgagee's Damages.—In an action by a mortgagee against a sheriff who had seized on a part of the mortgaged property under execution without depositing the amount of the mortgage debt, the mortgagee's recovery, if he is entitled to recover, must be limited to the value of the property taken and compensation for time and money spent in the pursuit of it.—*Keith v. Haggart*, S. C. Dak., May 26, 1887; 33 N. W. Rep. 465.

36. COLLISION—Tow—Steamboat—Passing.—When a steamboat, in attempting to pass a tow, collides therewith, the tow not being in fault, the steamboat will be responsible therefor.—*The Continental*, U. S. D. C. (N. Y.), May 27, 1887; 31 Fed. Rep. 166.

37. COLLISION—Vessels at Piers—Mutual Fault.—Where a vessel in swinging to a berth at the wharf assigned to her by the harbor-master sinks a sloop lying there with no one in charge of her, having made no effort to remove the sloop, both vessels are in fault, and the damages will be reduced.—*The Niebe*, U. S. D. C. (Ga.), April 5, 1887; 31 Fed. Rep. 164.

38. CONFUSION OF GOODS—Chattel Mortgage—Evidence.—In an action for the specific recovery of goods mortgaged to plaintiff, which were delivered under order of court, it is error not to let defendants show that the mortgagor was allowed by plaintiff to remain in possession and to sell from the stock, and that the stock had been replenished from the separate estate of the mortgagor's wife.—*Queen v. Werruag*, S. C. N. Car., May 30, 1887; 2 S. E. Rep. 657.

39. CONTRACT—Hiring—Negligent Driving.—In a suit for damages for the death of a horse and injuries to a carriage and harness, which were let to A at the request of one of the defendants to charge the price of the hiring to the defendants, the plaintiff can only recover from the defendants the price of the hiring.—*Wallace v. Langeland*, S. C. Mich., June 16, 1887; 33 N. W. Rep. 519.

40. CORPORATION—Agency—Process.—A person selling goods on commission for a corporation within a

county in a State different from the domicile of the corporation, is so far the agent of the corporation that process against the corporation may be served upon him even after the termination of his agency, the cause of action having grown out of his agency prior to its termination.—*Gross v. Nichols*, S. C. Iowa, June 28, 1887; 33 N. W. Rep. 653.

41. CORPORATIONS—Failure of Record—Estoppel.—When a corporation, becoming insolvent, issues bonds and places them as collateral for money advanced, which is received and used by the corporation, it and its creditors are estopped to set up its failure to record on its books an order of its directors authorizing such hypothecation as a defense to a claim by such creditor to be preferred in the distribution of the assets.—*Hubbard v. Campertown Mills*, S. C. S. Car., April 26, 1887; 2 S. E. Rep. 576.

42. CORPORATIONS—Report of Directors—Penal Statutes.—Where the report of the directors of a corporation states the amount of capital, and that amount paid in, "all paid cash, patent-rights, merchandise, etc.," it need not state the proportion paid in cash.—*Whitaker v. Masterton*, N. Y. Ct. App., June 28, 1887; 12 N. E. Rep. 604.

43. COSTS—Equity—Review.—Under South Carolina law, the judge can in an equity case direct who shall pay the costs, or may tacitly allow them to be taxed in favor of the successful party, and such action is not reviewable by any subsequent circuit judge.—*Cooke v. Poole*, S. C. S. Car., March 19, 1887; 2 S. E. Rep. 609.

44. COUNTY COMMISSIONERS—Claim—Evidence.—An omission to require further evidence as to a claim by the county commissioners, under South Carolina laws, is not an error of law, and they can reject the claim.—*Green v. Richland County*, S. C. S. Car., June 28, 1887; 2 S. E. Rep. 618.

45. COVENANT—Damages.—In an action for breach of covenant after eviction by paramount title, it is error to allow damages for increase of value prior to the eviction, if there is no evidence of such increase.—*Jones v. Shay*, S. C. Iowa, June 27, 1887; 33 N. W. Rep. 650.

46. CRIMINAL LAW—Arraignment and Plea—Record.—Where the record in a criminal case does not show that the accused was arraigned or waived it, or that any plea was entered by or for him, the conviction must be reversed.—*Hicks v. State*, S. C. Ind., June 29, 1887; 12 N. E. Rep. 522.

47. CRIMINAL LAW—Confessions—Instructions.—After a court has decided that a confession is voluntary, an instruction that the jury can decide whether the confession is voluntary is a harmless error.—*State v. Moorman*, S. C. S. Car., June 23, 1887; 2 S. E. Rep. 62.

48. CRIMINAL LAW—Correcting Record—Certiorari—Instructions—Petition.—Where it appears that instructions were not inserted in the case because the judge thought they were embraced in the general charge, a writ of certiorari to add them will be refused. Such petition should show some reason for supposing the judge will make the amendment desired. Both the instructions asked and those given should be set up on appeal.—*State v. Sloan*, S. C. N. Car., June 3, 1887; 2 S. E. Rep. 666.

49. CRIMINAL LAW—Forgery—Corroboration of Accomplice.—On a trial for forgery it was shown that the accused had once been convicted of that crime, that he and his accomplice had been associates, that at about that time the accused was in the city under an assumed name, and that upon his arrest his conduct and conversation showed that he knew of the forgery: Held, there was sufficient corroboration, under the law of the accomplice's testimony.—*People v. Elliott*, N. Y. Ct. App., June 28, 1887; 12 N. E. Rep. 602.

50. CRIMINAL LAW—Highway—Intent.—The gravamen of the offense of obstructing a public road is that such obstruction is wilful.—*Murphy v. State*, Tex. Ct. App., May 7, 1887; 4 S. W. Rep. 906.

51. CRIMINAL LAW—Ignorance of Fact—Highways.—

One cannot be convicted of obstructing a highway if it appears that he was ignorant of the fact that the road was a public road, and as soon as he learned that it was removed the obstruction.—*Guthrie v. State*, Tex. Ct. App., May 14, 1887; 4 S. W. Rep. 906.

52. CRIMINAL LAW—Insanity.—It is a proper instruction in a criminal case, in which the defense set up was the insanity of the prisoner, that the criterion of insanity was whether the prisoner knew at the time the act was committed that such act was wrong and a violation of the law.—*State v. Pagels*, S. C. Mo., June 20, 1887; 4 S. W. Rep. 931.

53. CRIMINAL LAW—Insanity—Responsibility.—The defendant in a criminal case, who alleges his insanity must prove it. If the defendant could distinguish between right and wrong in the act charged, he is responsible, though he may suffer from mental aberration in other matters.—*U. S. v. Ridgway*, U. S. C. C. (Ga.), June 15, 1887; 31 Fed. Rep. 144.

54. CRIMINAL LAW—Larceny—Growing Cotton—Felony.—Under the South Carolina law, stealing cotton not severed from the soil is a felony, and will not support a conviction of petty larceny.—*State v. Washington*, S. C. S. Car., June 23, 1887; 2 S. E. Rep. 623.

55. CRIMINAL LAW—Libel Instructions.—The court must instruct as to the law of libel, though the jury are made the judges of the law and of the facts in such cases.—*State v. Syphrett*, S. C. S. Car., June 23, 1887; 2 S. E. Rep. 624.

56. CRIMINAL LAW—Murder—Conspiracy—Strike—Evidence.—On a trial for murder, committed while a body of strikers were trying to drive miners from a mine, evidence of an assault by striking miners at a mine one and a half miles away, among whom was the defendant, is admissible; also the acts of other conspirators, if the murder was the result of a conspiracy, though the defendant was not present when the acts were done; so evidence of other acts done in pursuance of the plans of the strikers as tending to show a conspiracy.—*State v. McCahill*, S. C. Iowa, June 21, 1887; 33 N. W. Rep. 599.

57. CRIMINAL LAW—Pardon—Revocation—Fraud.—A pardon takes effect when it is delivered by the grantor and received and accepted by the grantee. A pardon obtained by fraud upon the pardoning power is void. A pardon may be revoked at any time before delivery to the grantee.—*Rosson v. Stehr*, Tex. Ct. App., April 16, 1887; 4 S. W. Rep. 897.

58. CRIMINAL LAW—Perjury—Instructions.—An instruction to a jury in a perjury case that they might give the verdict of the jury in the case in which the perjury was committed such consideration as they thought it entitled to, where it appears the defendant's testimony must have been disbelieved by that jury, is sufficient error to warrant a new trial.—*U. S. v. Burkhardt*, U. S. C. C. (Oreg.), June 22, 1887; 31 Fed. Rep. 141.

59. CRIMINAL LAW—Special Verdict—Judgment.—When a jury finds the facts, leaving the court to find the law thereon, a judgment by the court for the defendant makes the verdict absolute, and the defendant must be discharged.—*State v. Nash*, S. C. N. Car., May 9, 1887; 2 S. E. Rep. 645.

60. CRIMINAL LAW—Verdict—Sufficiency.—Where a verdict finds the accused guilty of assault and battery, with intent to commit manslaughter, not specifying whether the intent was to commit voluntary or involuntary manslaughter, it is sufficient.—*Brown v. State*, S. C. Ind., June 30, 1887; 12 N. E. Rep. 514.

61. CRIMINAL PRACTICE—Informal Verdict—Former Jeopardy.—A trial court may either amend or set aside an informal verdict. In the latter case such setting aside will not authorize the defendant to plead, in a subsequent trial, former jeopardy or *autrefois acquit*.—*Robinson v. State*, Tex. Ct. App., May 4, 1887; 4 S. W. Rep. 904.

62. DAMAGES—Loss of Profits.—Where plaintiff is stopped in the prosecution of his business, an assessment of his damages at his then rate of profits is

speculative and erroneous.—*Jones v. Call*, S. C. N. Car., June 14, 1887; 2 S. E. Rep. 647.

63. DEED—Delivery.—When land had been sold and paid for, and a deed, afterwards lost, had been delivered to vendee's sister: *Held*, that such delivery of the deed inured to the benefit of the vendee.—*McCormick v. McCormick*, S. C. Iowa, March 14, 1887; 33 N. W. Rep. 648.

64. DEMURRAGE—Mode of Discharge.—A consignee cannot force upon a vessel a substituted mode of discharge which involves either delay or increased cost.—*Street v. Ashley, etc. Co.*, U. S. D. C. (S. Car.), April 2, 1887; 30 Fed. Rep. 637.

65. DESCENT AND DISTRIBUTION—Adoption.—Adopted children, unless the law otherwise provides, stand as to the property of the adopting parent as his own children, and their children are his legal grandchildren with the rights of such.—*Powder v. Hayley*, Ky. Ct. App., June 2, 1887; 4 S. W. Rep. 683.

66. EJECTMENT—Bankruptcy.—The fact that the assignee in bankruptcy declined to sue for land claimed by the bankrupt, and verbally transferred his claim to the bankrupt, does not empower the latter to maintain ejectment for the land.—*Peters v. Wallace*, Ky. Ct. App., June 2, 1887; 4 S. W. Rep. 914.

67. EJECTMENT—Foreclosure Sale—Collateral Attack.—Where, in ejectment, the plaintiff relies on a regular foreclosure sale under a mortgage, the defendant cannot attack the mortgage and note as obtained by fraud. The remedy is in equity.—*Darnon v. Deeves*, S. C. Mich., June 16, 1887; 33 N. W. Rep. 512.

68. EJECTMENT—Possession—Intruder—Equity.—One in possession of premises may recover them in ejectment against a mere intruder, and the same rule holds when he goes into equity on account of the insolvency of the intruder.—*Nolan v. Pelham*, S. C. Ga., March 5, 1887; 2 S. E. Rep. 639.

69. EMINENT DOMAIN—Highways—Benefits.—Where valuable land is taken for a highway, and no special benefits to the owner are shown, no deduction for special benefits should be made from the damages upon the unexplained opinion of witnesses that the owner had suffered no damage.—*Müller v. Town of Beaver*, S. C. Minn., July 8, 1887; 33 N. W. Rep. 559.

70. EQUITY—Accounting—Waste—Injunction.—Equity, in an action for an account, will enjoin waste when irremediable mischief is being done or threatened, but it will not enforce merely a legal title to land.—*Lanier v. Atsom*, U. S. C. C. (Ga.), June 4, 1887; 31 Fed. Rep. 100.

71. EQUITY—Attachment—Legal Remedy.—When goods have been attached, and, under the State statute, delivered to an intervening claimant who has given bond as prescribed by statute, the remedy of the attaching creditor is at law upon the claimant's bond and not in equity.—*Block v. Abrahams*, U. S. C. C. (Mo.), April 10, 1887; 30 Fed. Rep. 546.

72. EQUITY—Clerk—Funds—Presumption.—In proceedings by motion, under North Carolina law, against a clerk and master for funds misappropriated by him, where there has been long delay in instituting proceedings, affirmative proof of non-payment will be required.—*Kerlee v. Corpening*, S. C. N. Car., May 30, 1887; 2 S. E. Rep. 664.

73. EQUITY—Creditor's Bill—Attachment—Fraudulent Conveyance.—Under Wisconsin law, a creditor at large may maintain a bill in equity in aid of an attachment at law. An absolute conveyance by a father to his daughter, intended as a mortgage to secure future advances, withheld from record for a long time, is a fraud on his creditors, but where the daughter subsequent to its execution makes advances *bona fide*, which are used to improve the property, she will be protected only to the extent to which the property is benefited thereby.—*Evans v. Loughton*, S. C. Wis., June 1, 1887; 33 N. W. Rep. 573.

74. EQUITY—Creditor's Bill—Attachment—Fraudulent Conveyance.—A creditor's bill, in aid of an attach-

ment to set aside a deed as fraudulent, which is found to be *bona fide*, can be maintained to subject a mortgage back, taken by the debtor at the time of the conveyance.—*Evans v. Virgin*, S. C. Wis., June 1, 1887; 33 N. W. Rep. 585.

75. EQUITY—Cross-bill—Dismissal of Original Bill.—When a bill in equity to restrain the working of a mine, for which an action in ejectment is pending is dismissed, together with the ejectment suit, a cross-bill to compel a conveyance of a portion of the property is not dismissed.—*Markell v. Ranson*, U. S. C. C. (Colo.), May 19, 1887; 31 Fed. Rep. 104.

76. EQUITY—Foreign Judgment—Creditor's Bill—Attachment.—To make a foreign judgment available it must be sued on. Funds in the hands of a clerk of a district court are not subject to garnishment at a suit at law, yet equity will reach them; to do so in a creditor's bill on a foreign judgment, rendered in favor of a non-resident against a non-resident, on which execution has been returned unsatisfied, the petition must show, that the debtor has no property in the State subject to garnishment or attachment.—*Weaver v. Cressman*, S. C. Neb., June 9, 1887; 33 N. W. Rep. 478.

77. EQUITY—Pleading—Demurrer.—A defendant cannot be permitted to file a demurrer to the whole bill and at the same time several pleas.—*United States v. Bell Telephone Co.*, U. S. C. C. (Mass.), April 8, 1887; 30 Fed. Rep. 523.

78. EQUITY—Powers—Execution—Aid.—Equity will aid the execution of powers in matters of form for meritorious parties, but on such a bill will not pass on the validity of the title, when such deed is one in a chain.—*American, etc. Co. v. Walker*, U. S. C. C. (Ga.), June 18, 1887; 31 Fed. Rep. 108.

79. EQUITY—Specific Performance.—When a person has paid full value for land under a verbal contract to buy it, has entered into possession and held the land for many years, making valuable improvements thereon, he is entitled to a decree for specific performance and to a deed for the land.—*Overpeck v. Thiemann*, S. C. Mo., June 6, 1887; 4 S. W. Rep. 927.

80. EXCEPTIONS—Bill of—Practice—Appellate Court—Notice.—If a trial court, in California, refuses to allow an exception, application may be made to the appellate court, but notice of such application must be served on the trial court as well as the adverse party.—*People v. Bittuncourt*, S. C. Cal., June 28, 1887; 14 Pac. Rep. 372.

81. EXECUTION.—In Tennessee, by statute, an execution cannot be levied on a growing crop after November 15, and an execution tested in July and levied on a crop in December cannot be sustained against the claim of one who purchased the growing crop in September.—*Edwards v. Thompson*, S. C. Tenn., May, 1887; 4 S. W. Rep. 913.

82. EXECUTION SALE—Who Cannot Set it Aside.—An execution sale of land will not be set aside upon the application of one who had purchased it and obtained title before the recovery of the judgment upon which the sale was founded.—*McLaughlin v. Bradford*, S. C. Ala., May 25, 1887; 2 South. Rep. 515.

83. EXECUTORS—Widow's Allowance—Non-residents.—The law making an allowance to a widow upon her application to a justice of the peace does not apply when the decedent was a non-resident and died in another State.—*Simpson v. Cureton*, S. C. N. Car., June 3, 1887; 2 S. E. Rep. 668.

84. EXTRADITION—Warrant—Habeas Corpus.—If a warrant issued for the arrest of a person for interstate extradition is of questionable regularity, the district judge may issue a second warrant, which will not be held void on *habeas corpus*.—*Fergus, Petitioner*, U. S. C. C. (Mass.), March 22, 1887; 30 Fed. Rep. 607.

85. FRAUD—False Representations.—A petition to recover damages for false representations must state the specific facts constituting the fraud.—*Kerr v. Steman*, S. C. Iowa, June 28, 1887; 33 N. W. Rep. 651.

86. FRAUDS—Statute of—Debt of Another—False Representations.—Where a property owner induces a dealer in brick to supply his subcontractors by verbal false representations, that he had the money coming to them under his control and he would so arrange it, that the dealer should be paid first. He also promised that if the contractors did not pay he would. Held, that the contract was not within the Michigan statute of frauds.—*Daniel v. Robinson*, S. C. Mich., June 16, 1887; 33 N. W. Rep. 497.

87. FRAUDULENT CONVEYANCES—Partnership—Third Parties—Parol Evidence.—In an action of replevin for property seized under attachments against a partnership, who had sold it to the plaintiffs, the plaintiffs tried to prove that one of the attachment debtors was not a partner, but that his mother was the real partner: Held, that the defendant might prove that the son was the real partner and was held out as such, although he signed the partnership articles in the name of his mother.—*Bishop v. Austin*, S. C. Mich., June 23, 1887; 33 N. W. Rep. 525.

88. FRAUDULENT CONVEYANCE—Transfer to Wife—Consideration.—Where a wife leaves her husband money, which he applies to improvements on his property, his transfer of a mortgage on that land for the unpaid purchase price thereon on a sale by him to his wife will be sustained against his creditors.—*Iowa City Bank v. Weber*, S. C. Iowa, June 22, 1887; 33 N. W. Rep. 606.

89. FRAUDULENT CONVEYANCE—Trove—Jury.—In an action of trover for the seizure and sale of goods under execution, where the defense is that the sale by the judgment debtor to the plaintiff is fraudulent, the question must be decided by the jury, even though the sale, as to some of the goods, was in violation of the United States revenue laws.—*Wessels v. Beeman*, S. C. Mich., June 16, 1887; 33 N. W. Rep. 510.

90. FRAUDULENT CONVEYANCE—Secret Trust—Equity—Execution.—A decree subjecting land to the debts of the purchaser thereof, who had the deed made to his son to defraud his creditors, will be sustained. In such case, if the debtor has no property to levy on, it is not necessary to issue an execution and have it returned *nulla bona* before filing the bill to reach that property.—*Smalley v. Mass*, S. C. Iowa, June 24, 1887; 33 N. W. Rep. 619.

91. GAMING—Indictment—Judgment—Mistake.—An indictment is sufficient which charges that the defendant "wagered and bet at a faro bank." If the verdict assesses the fine at ten dollars and the judgment is for a fine of five dollars, only the mistake can be corrected.—*Short v. State*, Tex. Ct. App., April 27, 1887; 4 S. W. Rep. 905.

92. GARNISHMENT—Value of Property—Authority of Garnishee—Trusts.—Where the property garnished consists of works of art, there must be some proof of their value to support a judgment against the garnishee. A garnishee having full formality to bind the principal debtor can waive formalities in the proceedings as to him. Where a valid declaration of a trust for creditors has been made, a subsequent garnishment is subject to such trust.—*Keppel v. Moore*, S. C. Mich., June 16, 1887; 33 N. W. Rep. 499.

93. GRAND JURY—Federal Courts—State Practice—Challenges.—There being no law of the United States regulating challenges to grand jurors, a federal court is authorized in such case to follow the practice of the State in which it is held.—*State v. Eagan*, U. S. C. C. (Mo.), March 26, 1887; 30 Fed. Rep. 608.

94. HIGHWAYS—Laying out—Petition.—When the petition is not that the highway be established, but that it be opened for travel, all the proceedings are void, and they work no estoppel on the county in claiming that the highway has been established before.—*Curtis v. Peacohontas Co.*, S. C. Iowa, June 23, 1887; 33 N. W. Rep. 616.

95. HIGHWAYS—Supervisors—Municipalities.—In Iowa, the county board of supervisors cannot lay out a

highway over land within the limits of an incorporated town.—*Gallagher v. Head*, S. C. Iowa, June 24, 1887; 33 N. W. Rep. 620.

96. HOMESTEAD—Levy—Paying Excess.—When a sheriff has notified the owner of a homestead levied on under execution to pay the excess of its value over the exemption, such payment may be made within sixty days after the decision of the appeal from the award of the appraisers.—*Simonds v. Halthcock*, S. C. S. Car., June 21, 1887; 2 S. E. Rep. 616.

97. HOMESTEAD—Liability Ex Delicto—Surety.—In Alabama, homesteads are not exempt from liabilities arising *ex delicto*. The homestead of a defaulting tax-collector is liable to execution on a judgment rendered for such default on his bond. A surety who has paid the judgment in such a case is entitled to be subrogated to the rights of the State.—*Schussler v. Dudley*, S. C. Ala., July 1, 1887; 2 South. Rep. 526.

98. HOMESTEAD—Valuation—Sale.—Where, in the valuation of the homestead exemption, the constitutional limits are exceeded, there should not be a sale, but a re-allotment.—*Oakley v. Van Noppen*, S. Q. N. Car., May 31, 1887; 2 S. E. Rep. 663.

99. HUSBAND AND WIFE—Alienating Wife's Affections.—In an action by a married man against his father-in-law for taking and detaining his wife, statements of his wife during that period as to why she stayed with her parents and her feelings and wishes at that time are admissible; so are the acts and remarks of the mother-in-law upon the alienation of her daughter, when she acted in concert with her husband in bringing about the separation.—*Edgell v. Francis*, S. C. Mich., June 16, 1887; 33 N. W. Rep. 501.

100. INDICTMENT—Mistake—Verdict.—An indictment, otherwise perfect, stated by a clerical error that the stolen goods were taken and carried off, not by the defendant, but by the person alleged to be the owner thereof: Held, that the mistake could not be taken advantage of after verdict.—*People v. Monteth*, S. C. Cal., June 29, 1887; 14 Pac. Rep. 373.

101. INJUNCTION—Bond—Bond Damages.—Where an injunction is wrongfully obtained and a receiver appointed, the injured party cannot recover on the bond for the mismanagement of the receiver, when the receiver has settled his accounts and been discharged without objection. Damages by depreciation cannot be recovered, when the receiver did all he could to dispose of the property to the best advantage. Profits that might have accrued, in the absence of clear testimony, are too speculative.—*Lehman v. McQuown*, U. S. C. C. (Colo.), May 12, 1887; 31 Fed. Rep. 138.

102. INSURANCE—Foreign Companies—Statute.—Construction of Missouri statute requiring foreign insurance companies proposing to do business in that State to file certificates, etc., with the commissioner of insurance.—*Knapp, etc. Co. v. National, etc. Co.*, U. S. C. C. (Mo.), April 21, 1887; 30 Fed. Rep. 607.

103. INSURANCE—Life—Delivery of Policy after Applicant's Death.—Where a policy conditioned to be enforced only when signed and delivered, is, after applicant's death and in ignorance of it, delivered at the proper place, such policy is void.—*Misselhom v. Mutual, etc. Co.*, U. S. C. C. (Mo.), April 5, 1887; 30 Fed. Rep. 545.

104. INSURANCE—Life—Mutual Benefit—Arrears.—Where the constitution of a mutual benefit association provides that a certificate cannot be forfeited till the party is more than six months in arrears for the local lodge dues, such dues do not become in arrears till the end of the term, though the lodge provides that they are payable in advance.—*Wiggin v. Knights of Pythias*, U. S. C. C. (Tenn.), June 18, 1887; 31 Fed. Rep. 123.

105. INSURANCE—Mutual Benefit Association—Assessment.—The certificate of a membership of a mutual benefit society, by which it stipulates that, in case of the death of the member, it will levy an assessment for his beneficiary not to exceed \$5,000, binds it to levy an assessment, but its refusal to do so does not make it liable for the maximum \$5,000. Such cases are of legal, not

equitable cognizance.—*Newman v. Covenant, etc. Assn.*, S. C. Iowa, June 28, 1887; 33 N. W. Rep. 562.

106. INSURANCE—Mutual Benefit—Assessment.—An action against a mutual benefit association to recover an assessment which it refuses to make cannot be sustained. The remedy is to compel it to make the assessment.—*Ranisbarger v. Union, etc. Assn.*, S. C. Iowa, June 25, 1887; 33 N. W. Rep. 626.

107. INSURANCE—Mutual Benefit Association—Pleading—Waiver.—A plaintiff in reply to a plea that the assured had failed to pay assessments for a certain year, may deny such failure, and may also allege that the defendant demanded, received and retained assessments for subsequent years; and such allegations, if proved, show that the defendant waived the forfeiture consequent upon such failure to pay the assessments.—*Tobin v. Western, etc. Assn.*, S. C. Iowa, June 29, 1887; 33 N. W. Rep. 653.

108. INTOXICATING LIQUORS—Druggist—Permit.—Under Iowa laws, in force in 1883-85, a druggist without a permit from the county supervisors could not sell intoxicating liquors at wholesale, and in an action by him for a balance due on such sales the defendant may recover all payments on account.—*Tolbert v. Clough*, S. C. Iowa, June 27, 1887; 33 N. W. Rep. 639.

109. INTOXICATING LIQUORS—Illegal Contract—Constitutional Law.—Under the laws of Iowa, sale of intoxicating liquors without a permit, made in the State, is an illegal contract, and payments made in the State may be recovered back. This law is not a "regulation of commerce among the States," being merely a police regulation for the health, safety and welfare of citizens of the State.—*Connolly v. Scarr*, S. C. Iowa, June 27, 1887; 33 N. W. Rep. 641.

110. JUDGMENT—Appeal—Effect of.—While an appeal is pending the case stands as though no final decision had been made.—*Day v. DeYonge*, S. C. Mich., June 23, 1887; 33 N. W. Rep. 527.

111. JUDGMENT—Default—Opening—Conditions.—Where non-resident defendants, in an application for setting aside a judgment taken by default, and for leave to answer, show a meritorious case for the relief asked, a requirement that they must first file a bond with resident sureties, conditioned to pay such judgment as may be awarded against them, is not a reasonable exercise of the discretion of the court.—*Brown v. Brown*, S. C. Minn., June 15, 1887; 33 N. W. Rep. 546.

112. JUDGMENT—Default—Proof—Appeal.—In an action to avoid a mortgage and its statutory foreclosure for usury, no proof is required upon the failure of the defendant, who has been personally served with the summons, to answer. The plaintiff need not offer to pay the money actually received. An appeal from an order refusing, except on terms, to open a default, does not prevent the entry of judgment upon the default.—*Esley v. Berryhill*, S. C. Minn., July 8, 1887; 33 N. W. Rep. 567.

113. JUDGMENT—Defendants' Rights—Res Adjudicata.—Where several defendants set up conflicting claims of ownership of property, their rights between themselves may be determined, and such judgment will be evidence in subsequent actions where the title is called in question.—*Goldschmidt v. Mills*, S. C. Minn., May 30, 1887; 33 N. W. Rep. 544.

114. JUDGMENTS—Mistakes—Correction.—The law allowing entries made to be corrected for mistake at a subsequent term, refers to mistakes of fact. A judgment of foreclosure will not be corrected on motion for an alleged mistake, when the decree before being signed was examined and approved by the counsel of the party moving for the correction.—*Knox v. Moser*, S. C. Iowa, June 23, 1887; 33 N. W. Rep. 617.

115. JUDGMENTS—Mortgages—Liens—Parties.—A purchaser of real estate at a foreclosure sale, where two prior judgment creditors were parties, but a third was omitted, takes subject to a sale under the judgment of the omitted creditor, though the foreclosure decree provided for paying the two judgments out of the pro-

ceeds.—*Whitney v. Huntington*, S. C. Minn., July 8, 1887; 33 N. W. Rep. 561.

116. JUDGMENT—Practice.—When two suits have been brought between the same parties involving the same question, one in equity and one at law, and the former case is first decided, it is proper to strike out, in the latter, an answer controverting the decision rendered in the former case.—*Estes v. Chicago, etc. Co.*, S. C. Iowa, June 27, 1887; 33 N. W. Rep. 647.

117. JUDGMENT—Satisfaction—Set-off.—At common law, courts could set-off one judgment against another if substantially the same parties. In the practice of the United States courts this matter is regulated by act of March 3, 1875 (18 Stat. at Large, 481), and under it a claim allowed against the United States by the treasury department cannot be set-off against a judgment.—*United States v. Grinnold*, U. S. D. C. (Oreg.), May 8, 1887; 30 Fed. Rep. 604.

118. JUDGMENTS—Setting Aside—Return.—Courts of equity will not set aside adjudications, which have been regularly entered, on slight or unsatisfactory evidence. In such proceedings, a contradiction of the return of service cannot be allowed, since that was a question the court then passed on in determining its jurisdiction.—*Ketchum v. White*, S. C. Iowa, June 25, 1887; 33 N. W. Rep. 627.

119. JURY—Impanelling—Adjournment.—It is error after a jury has been impaneled and sworn to permit them or any of them before trying that case to try another case.—*Lyons v. Hamilton*, S. C. Iowa, June 28, 1887; 33 N. W. Rep. 655.

120. JURY—Trial by—Oleomargarine.—Under the New Jersey statutes, regulating the subjects of oleomargarine and similar substances, the right of trial by jury does not exist in favor of persons charged with violation of those statutes.—*Carter v. Camden, etc. Court*, S. C. N. J., June 23, 1887; 10 Atl. Rep. 108.

121. LANDLORD AND TENANT—Distress Warrant—Mortgaged Property.—A landlord cannot seize, under a distress warrant for rent, goods which the tenant has already *bona fide* mortgaged, though they are still on the premises.—*Knobloch v. Smith*, S. C. S. Car., March 19, 1887; 2 S. E. Rep. 612.

122. LANDLORD AND TENANT—Erection—Rent.—Where a landlord leaves a water-lot to a boat-club, and then moors his steamers in front of it, so as to cut off all ingress and egress, the tenant is relieved from paying rent, while such acts are continued.—*Pirdgeon v. Excelsior Boat Club*, S. C. Mich., June 16, 1887; 33 N. W. Rep. 502.

123. LANDLORD AND TENANT—Process of Eviction—Record—Justice of the Peace.—Under Pennsylvania process for ejecting a holding-over tenant, the record of the justice is fatally defective if it falls to state the date of the expiration of the lease. Nor is it cured by proof that the tenant had three months before action brought been served with notice to quit. A justice's record must show everything essential to his jurisdiction.—*Hourner v. Wetherill*, S. C. Penn., Feb. 23, 1887; 10 Atl. Rep. 40.

124. LIBEL—Privileged Communication—Office.—When a citizen who is asked by a reporter concerning the candidacy of A for a city office, says he wonders if the city will have the same experience with A that England had with Cyprus, meaning that A would prove to be a moral graveyard, and his statement is published in the paper: *Held*, that the statement was not privileged.—*Wheaton v. Beecher*, S. C. Mich., June 16, 1887; 33 N. W. Rep. 508.

125. LIEN—Live Stock—Mortgage.—The lien for keeping live stock given by the Territorial law is subject to a mortgage previously recorded.—*State Bank v. Lowe*, S. C. Neb., July 6, 1887; 33 N. W. Rep. 482.

126. LIEN—Maritime—Sale of Vessel—Distribution.—When a domestic vessel is libeled for supplies furnished, and is sold before the expiration of the thirty days in which the specifications of claims are to be filed under State laws, the proceeds should be distributed

according to the liens on her when the libel was filed.—*The Niagara*, U. S. D. C. (N. Y.), April 6, 1887; 31 Fed. Rep. 163.

127. LIMITATIONS—Adverse Possession—Tax-title.—In Arkansas, one who claims title to land by the statute of limitations must show actual adverse possession continuing for seven years. Mere girdling of trees and paying taxes will not suffice. Ruling as to the operation and validity of tax-deeds under Arkansas statute.—*Scott v. Woodruff*, S. C. Ark., May 14, 1887; 4 S. W. Rep. 908.

128. LIMITATIONS—Partial Payment.—If a debtor acknowledges part of an outlawed debt to be justly due and pays that part, such payment does not deprive him of the benefit of the bar as to the remainder of the debt.—*Cronshones v. Knox*, S. C. Penn., May 23, 1887; 10 Atl. Rep. 25.

129. LIMITATIONS—Possession—Right of Way.—The Colorado act, giving title after possession under color of title after five years, applies to the right of way of a railroad, though the condemnation proceedings were invalid for want of notice.—*Keener v. Union Pac. R. Co.*, U. S. C. C. (Colo.), May 4, 1887; 31 Fed. Rep. 128.

130. LOGGING—Negligence—Jams.—A boom company engaged in driving logs will be liable for damages caused to crops by overflows produced by a jam of the logs, if such jam was caused by its negligence or by failure to break up jams formed by natural causes.—*Bauman v. Pere Marquette, etc. Co.*, S. C. Mich., June 23, 1887; 33 N. W. Rep. 538.

131. MANDAMUS—Certiorari.—A peremptory mandamus cannot be issued unless notice is given in some mode to the defendant. A mandamus and certiorari cannot be joined in the same writ.—*Fairbanks v. Amoskeag, etc. Bank*, U. S. C. C. (N. H.), March 1, 1887; 30 Fed. Rep. 602.

132. MARRIED WOMAN—Separate Business—Separate Estate.—A married woman may, in Alabama, conduct a business separate from that of her husband, and with his consent all her earnings and profits acquired by such business become part of her separate estate, and is not liable for the debts of her husband.—*Carter v. Worthington*, S. C. Ala., June 14, 1887; 2 South. Rep. 516.

133. MASTER AND SERVANT—Negligence.—Where a person engaged by another to underpin a wall adjoining a cellar, contrary to instructions, begins prematurely, whereby the wall fell, the party so engaging him to underpin the wall is responsible for the negligent acts of the person engaged to do the work, although the disaster was caused by his disobedience of orders.—*Mound City, etc. Co. v. Conlon*, S. C. Mo., June 6, 1887; 4 S. Rep. 922.

134. MASTER AND SERVANT—Negligence—Knowledge of Defect.—Where, in an action for negligence, producing the death of the servant, the master pleads that the servant had full knowledge of the defect for a long time, the master must prove affirmatively an absence of objection by the servant or of his promise of amendment.—*Worden v. Humeston, etc. R. Co.*, S. C. Iowa, June 25, 1887; 33 N. W. Rep. 629.

135. MASTER AND SERVANT—Negligence—Risks of Employment.—An unblocked guard-rail is not necessarily an evidence of negligence of a railroad company in providing for the safety of its employees, but the absence of such a provision for the security of employees may be so far regarded as proof of negligence that a verdict will not be set aside because there was no evidence of negligence, if it was in proof that there were no blocks to the guard-rails.—*Huhn v. Missouri, etc. Co.*, S. C. Mo., June 6, 1887; 4 S. W. Rep. 937.

136. MASTER AND SERVANT—Risks of Employment.—Though a servant knows the defective condition of the instrumentalities with which he works, he is not guilty of contributory negligence, unless he knows, or ought to know the risks to which those defects expose him.—*Wustila v. Duluth Lumber Co.*, S. C. Minn., June 18, 1887; 33 N. W. Rep. 551.

137. MECHANIC'S LIEN—Record.—Mechanics' liens

are not records. If the claim of the lien is not properly indexed, incumbrancers are not bound to search further, and are not charged with notice of its existence.—*Appeal of Cassa*, S. C. Penn., June 1, 1887; 10 Atl. Rep. 1.

138. MINING LAW—Monuments.—If, by mistake, the monuments of a mining claim are placed wrong, it being done in the night, the claim will, nevertheless, be valid if the location is otherwise correct.—*Doe v. Tyler*, S. C. Cal., June 30, 1887; 14 Pac. Rep. 375.

139. MORTGAGE—Discharge—Lien.—A mortgage given to bondsmen to indemnify them until the completion and acceptance of the bridge, for the construction of which they have signed the bond, is not discharged by the necessary completion of the bridge by the bondsmen themselves, and is a lien superior to a subsequent judgment, it being duly recorded.—*Bellamy v. Cathcart*, S. C. Iowa, June 25, 1887; 33 N. W. Rep. 636.

140. MORTGAGE—Foreclosure—Redemption.—If a homestead and adjacent lands are mortgaged and sold der foreclosure proceedings, a judgment creditor whose claim accrued while the homestead exemption was in force, is not a necessary party to the foreclosure proceedings, nor has he any right to redeem.—*Sutherland v. Tyner*, S. C. Iowa, June 27, 1887; 33 N. W. Rep. 645.

141. MORTGAGE—Power—Sale Under—Redemption.—In Alabama, a sale under a power given in a mortgage is valid, if made in conformity and pursuance of the power, even if no deed is made. Such a sale cuts off the equity of redemption, and leaves the mortgagor only the statutory right of redemption within two years after the sale.—*Mewburn v. Bass*, S. C. Ala., June 30, 1887; 2 South. Rep. 520.

142. MUNICIPAL CORPORATION—Agent—Bonds.—A power to an agent to buy, provide for, or procure a thing, implies a power to give the negotiable note of his principal therefor, and this applies to municipal corporations.—*Holmes v. City of Shreveport*, U. S. C. C. (La.), 1887; 31 Fed. Rep. 113.

143. MUNICIPAL CORPORATIONS—Nuisances—Abatement.—The aldermen of the city of Hudson have ample power to remove in a summary manner any encroachments on the streets, and this applies to the wilful maintenance of a fence, when the party knows that it is an encroachment, but not to valuable improvements made in good faith, where the right is doubtful.—*Childs v. Nelson*, S. C. Wis., June 1, 1887; 33 N. W. Rep. 587.

144. MUNICIPAL CORPORATIONS—Railroad Aid Bonds—Legislature.—The legislature may authorize towns to subscribe to the stock of railroads, to make donations to them, and to issue town bonds to raise the money.—*Wood v. Commrs. of Oxford*, S. C. N. Car., May 27, 1887; 2 S. E. Rep. 653.

145. MUNICIPAL CORPORATIONS—Street Railways—Monopolies—Constitutional Law.—The provision in the Iowa constitution against monopolies has no application to an exclusive grant to a corporation, when similar rights can be acquired by an individual by contract. Cities can grant exclusive privileges for street railroads for thirty years within their limits, in Iowa.—*Des Moines, etc. R. Co. v. Des Moines, etc. R. Co.*, S. C. Iowa, June 27, 1887; 33 N. W. Rep. 610.

146. NATURALIZATION—Record—Foreign.—Naturalization must be proved by the record of the court, which is final, but the original *Matus* of an alien is presumed to continue till the contrary is shown. This country will not recognize a foreign born as its citizen, who has placed himself under the dominion of a foreign country and for eighteen years has held himself out as an alien, even though his citizenship there anew has been obtained by fraud.—*Charles Green's Son v. Salas*, U. S. C. C. (Ga.), June 4, 1887; 31 Fed. Rep. 106.

147. NEGLIGENCE—Carriers—Pleading—Limitation of Liability.—An allegation that the mules were delivered to the defendant, a common carrier, and were destroyed by fire while in his possession, is a sufficient allegation of his negligence. A carrier cannot contract for immunity from his negligence, and if his contract

for non-liability for each mule above a certain price was obtained by a statement that the carriage was taken at a reduced rate, he is not relieved, if such statement is false, which may be shown by parol.—*McFadden v. Missouri P. R. Co.*, S. C. Mo., June 6, 1887; 4 S. W. Rep. 689.

148. NEGLIGENCE—Contributory Negligence—Admiralty.—Courts of admiralty adjudicating cases of maritime tort do not hold themselves bound "by the rules of common law courts," nor do they recognize contributory negligence as a bar to relief for personal injuries inflicted upon a party by the tort or culpable negligence of another person. They will afford proper redress regardless of such contributory negligence on the part of the person injured.—*Le Baron v. The Daylesford*, U. S. D. C. (Ala.), March 14, 1887; 30 Fed. Rep. 633.

149. NEGLIGENCE—Contributory—Custom.—An employee of a car company, who goes under a car after it is completed and put on the defendant's track for transportation, and is killed by starting the car after coupling it to others, the conductor having looked over the car just before starting to see if any one was working under it, is guilty of contributory negligence, and proof of a custom authorizing such an act is not admissible.—*Coops v. Lake Shore, etc. R. Co.*, S. C. Mich., June 23, 1887; 33 N. W. Rep. 541.

150. NEGLIGENCE—Damages—Proximate Cause—Telegrams.—In an action for negligence in not delivering a telegram, notifying the plaintiff of the arrival of staves by a barge, which were lost by a flood thereafter, the plaintiff can recover for loss of the use of the barge, but not for the loss of the staves, as such negligence is not shown to be the proximate cause of the loss of the staves.—*Bodkin v. Western U. T. Co.*, U. S. C. C. (Ky.), Feb. 14, 1887; 31 Fed. Rep. 134.

151. NEGLIGENCE—Employee—Burden of Proof.—Where the plaintiff alleges that he, while engaged in switching cars, was injured, owing to the failure of the fireman to communicate properly his signals to the engineer of the switching engine through incompetency, he must prove the fireman's receipt of the signal, his misinterpretation thereof to the engineer through ignorance, and that the accident resulted therefrom.—*Catlin v. Mich. Cent. R. Co.*, S. C. Mich., June 16, 1887; 33 N. W. Rep. 515.

152. NEGLIGENCE—Ships—Ladders—Contributory.—Where a ship owner furnishes an unsafe ladder to be used by stevedores in unloading his ship, he is guilty of negligence, and so is the stevedore in using it without examining it. In this case plaintiff was allowed a portion of his damages.—*Flaherty v. The Truro*, U. S. D. C. (N. Y.), June 8, 1887; 31 Fed. Rep. 159.

153. NEGLIGENCE—Wharves—Crossing Intermediate Boats.—Vessels necessarily moored to other vessels next to the wharf have an implied license for their men to pass over such vessels for necessary purposes on shore, but such vessels are only required to keep such passage ways safe for such purposes as are ordinarily so used.—*Anderson v. Scully*, U. S. D. C. (N. Y.), May 1887; 31 Fed. Rep. 161.

154. NEGOTIABLE INSTRUMENTS—Notice of Dishonor—Insolvency.—The notice of dishonor of a negotiable instrument may properly be addressed to an insolvent firm at its former place of business where a trustee is winding up its affairs. A notice of protest may be properly deposited in a street letter-box, and is legally mailed.—*Casco, etc. Bank v. Shaw*, S. J. C. Me., April 19, 1887; 10 Atl. Rep. 67.

155. NEW TRIAL—Conflicting Evidence.—A new trial will not be granted when the evidence is conflicting and the case has been submitted to the jury on a proper charge by the presiding judge.—*Laveyae v. Lewiston*, etc. Co., S. J. C. Me., April 20, 1887; 10 Atl. Rep. 62.

156. NUISANCE—Notice.—Where a village ordinance authorized the abatement of nuisances upon notice to the owners of the land, it is necessary to the lawful abatement of a nuisance that the trustees should give special notice to the owner of the land on which

they propose to act.—*Berder v. Ellsworth*, S. C. Vt., July 7, 1887; 10 Atl. Rep. 89.

157. NUISANCE—Railroads—Streets—Injunction.—Occupation of a street by a railroad, with a slide track and cars, without authority of law, is a public nuisance, and if by its continuance a permanent mischief must occasion a constantly recurring grievance, equity will enjoin it at the suit of an owner of adjoining property.—*Kavanagh v. Mobile, etc. R. Co.*, S. C. Ga., Feb. 26, 1887; 2 S. E. Rep. 636.

158. NUISANCE—Ultra Vires.—A town is not liable in damages to a citizen for an act creating a private nuisance; which act was not within the scope of its corporate powers.—*Seale v. Inhabitants, etc.*, S. J. C. Me., April 5, 1887; 10 Atl. Rep. 45.

159. PATENTS—Combination.—The combination in patent No. 90,577 for making crackers does not possess patentable novelty.—*Duesh v. Medlar Co.*, U. S. C. C. (Penn.), April 25, 1887; 30 Fed. Rep. 619.

160. PATENTS—Drive Chains.—Letters patent 154,594 were granted to one Ewart, and reissues April 20, 1875, June 15, 1880, and February 15, 1884: Held, that the second claim in the last reissue must be limited to links coupled as in the first claim, which claim is infringed by patent 324,734 to Seldner.—*Ewart, etc. Co. v. Bridgport, etc. Co.*, U. S. C. C. (Conn.), May 20, 1887; 31 Fed. Rep. 149.

161. PATENTS—Envelopes.—Patent No. 9,756, for counting envelopes, etc.: Held, not to have been infringed by the defendant in this case.—*Hill v. Holyoke, etc. Co.*, U. S. C. C. (Mass.), March 10, 1887; 30 Fed. Rep. 623.

162. PATENTS—Infringement.—It is an infringement on the right of a patentee for one who has bought of him the right to sell in certain cities to sell the patented articles to dealers to be resold outside of his territorial limits.—*Hatch v. Hull*, U. S. C. C. (N. Y.), April 26, 1887; 30 Fed. Rep. 613.

163. PATENTS—Infringement—License—Option Contract.—An agreement to sell to a party a patent-right at purchaser's option within sixty days after the decision of a suit for its infringement does not amount to a license to the licensees of the purchaser pending the suit and the expiration of the option. One who, by mistake of the operation of a contract, violates an injunction, will be discharged on payment of costs.—*Iowa, etc. Co. v. Southern, etc. Co.*, U. S. C. C. (Mo.), April 22, 1887; 30 Fed. Rep. 615.

164. PATENTS—Novelty.—Reissued patent No. 269,365, for improvement in cake-making machines: Held, to be without patentable novelty.—*Roth v. Keebler*, U. S. C. C. (Penn.), 1887; 30 Fed. Rep. 618.

165. PATENTS—Novelty.—The mere turning down and cementing celluloid collars is not new.—*Celluloid, etc. Co. v. Zylonde, etc. Co.*, U. S. C. C. (N. Y.), March 24, 1887; 30 Fed. Rep. 617.

166. PATENTS—Photographic Album Leaf.—Design Patent 14,961, to Stephen Meers, if construed to include generally a plain border inclosing a pebbled border, which incloses a pocket, is void.—*Meers v. Kelly*, U. S. C. C. (N. Y.), May 16, 1887; 31 Fed. Rep. 153.

167. PATENTS—Res Adjudicata.—The ruling of a circuit court of the United States will be followed in patent cases when the subject-matter, the pleadings and the evidence are similar to those in the case under consideration.—*Worswick, etc. Co. v. City of Philadelphia*, U. S. D. C. (Penn.), March 22, 1887; 30 Fed. Rep. 625.

168. PATENTS—Reissue.—Reissued letters patent containing a claim not included in the original patent will be held invalid, especially if the reissued claim was refused when the original patent was granted.—*Dobson v. Lees*, U. S. C. C. (Penn.), April 25, 1887; 30 Fed. Rep. 626.

169. PATENTS—Water-trough.—A patent for a water-trough for animals, in which the water comes in at the sides and from the bottom: Held, to be valid.—*North American Iron Works v. Fisher*, U. S. C. C. (N. Y.), April 19, 1887; 30 Fed. Rep. 622.

170. PATENTS—Water-closet.—Patent No. 302,666, for improved water-closet basin, held, void, for want of invention.—*Mott, etc. Co. v. Skirru*, U. S. C. C. (N. J.), March 21, 1887; 30 Fed. Rep. 621.

171. PARTITION—Parties—Appearance—Infants—Trust Confirmation.—Parties to a partition suit who are served with process and for whom counsel appear, are bound by the decree. An answer by a father as guardian *ad litem* of infants, binds them, although he was not formally appointed such guardian. A trustee who has sold trust property, and doubts his authority to do so, is entitled to a plenary proceeding to have his action confirmed.—*Simmons v. Baynald*, U. S. C. C. (S. Car.), April 15, 1887; 30 Fed. Rep. 532.

172. PARTITION—Validity—Curative Act—Construction.—Construction of the curative act of Pennsylvania of April 25, 1850, declaring the true intent and meaning of the act of April 13, 1840, relative to partition and devises of real estate.—*Foswinkel v. Patterson*, S. C. Penn., June 1, 1887; 10 Atl. Rep. 3.

173. PARTNERSHIP—Contract with Firm—Fraud.—Where several members of a partnership make a contract to do work for the partnership under another name, and get another to take it off their hands, giving them a percentage, the other members can claim their share of the profits, though they continued to advance their proportions of the contract price.—*Whitman v. Bowden*, S. C. S. Car., June 28, 1887; 2 S. E. Rep. 630.

174. PARTNERSHIP—Dissolution—Fraudulent Conveyance.—One is a partner who has made a contract to be such, although he has not paid in his share of the capital. If the articles of partnership prescribe its duration, the burden of proof to show an earlier dissolution is upon the party who asserts it. In Iowa, a debtor in falling circumstances may prefer creditors by mortgage or otherwise.—*Southern, etc. Co. v. Haas*, S. C. Iowa, June 27, 1887; 33 N. W. Rep. 657.

175. PARTNERSHIP—Patent-right—Trust—Royalties—New Partners—Dissolution.—Where a partnership is formed, in which one partner puts in a patent, the other money, the royalties being payable to the former, he becomes a trustee for the latter, and is bound to account to him for his share. Rights of new parties under circumstances stated set forth and declared. When and how such a partnership can be dissolved.—*Rogers v. Reissner*, U. S. C. C. (N. Y.), March 28, 1887; 30 Fed. Rep. 525.

176. PLEADING—Ejectment—Right of Possession.—A complaint in ejectment which states that the plaintiffs are seized in fee, that the defendants are in possession, and that they unlawfully withhold said possession, sufficiently alleges the right of the plaintiffs to the immediate possession.—*Wilmington, etc. R. Co. v. Garner*, S. C. S. Car., June 28, 1887; 2 S. E. Rep. 634.

177. PLEDGE—Tender—Conversion—Lien.—The lien of a pledgee of a chattel is extinguished by a tender of the amount due. Refusal to accept such amount is a conversion, for which an action of trover may be maintained. The assignee of a chattel so pledged may, by California statute, maintain in proper cases a complaint in intervention.—*Loughborough v. McNevis*, S. C. Cal., June 23, 1887; 14 Pac. Rep. 309.

178. PRACTICE—Different Counts—Demurrer—Harmless Error.—An error in sustaining a demurrer to one count is harmless, when the same facts are substantially set up in another count, which is submitted to the jury under proper instructions.—*Watson, etc. Co. v. James*, S. C. Iowa, June 25, 1887; 33 N. W. Rep. 622.

179. PRACTICE—State—Federal Courts.—In federal courts legal and equitable claims cannot be blended in one suit, nor can an equitable defense be set up to an action at law.—*Doe v. Roe*, U. S. C. C. (Ga.), April 29, 1887; 31 Fed. Rep. 97.

180. PRACTICE—Special Verdict.—If a verdict is taken subject to the opening of the court on a question of law reserved, but no facts are stated in the record on which the question may be determined, the court will not decide the reserved point, but will set aside the

verdict for uncertainty.—*Central Bank, etc. v. Earley*, S. C. Penn., Feb. 27, 1887; 10 Atl. Rep. 33.

181. PRINCIPAL AND AGENT—Contract.—A wrote to B, saying he had a customer who might buy B's land, and asking his price, the terms on which he would sell, paying his commission. B in his answer stated his price, his terms only partially and agreed to pay the commission: Held, that A was not thereby constituted B's agent with power to bind him by a contract of sale.—*Stillman v. Fitzgerald*, S. C. Minn., July 8, 1887; 33 N. W. Rep. 564.

182. PROMISSORY NOTE—Indorser—Agency—Estoppel.—If the indorsee of a note constitute the indorser, his agent, for its collection, payment to the indorser (payee) is good. If an indorser takes up the note by giving his own note, the title to the original note vests in him. A maker of a note paying it to the wrong party, cannot rely, as an estoppel, on facts which were unknown to him and did not influence his action.—*Exchange Bank v. Johnston*, U. S. C. C. (Tenn.), March 15, 1887; 30 Fed. Rep. 588.

183. PUBLIC LANDS—Homestead—Exemption.—When a settler upon public lands, under the homestead laws, dies before he has acquired the title, his devisee can acquire the title, exempt from all liability for his own prior debts.—*Coleman v. McCormick*, S. C. Minn., July 8, 1887; 33 N. W. Rep. 556.

184. PUBLIC LANDS—Mexican Grants—Powers—Presumption—Judicial Notice.—Construction of Mexican law of 1824, and regulations of 1828, concerning public lands in California. The power of the governor of California (Mexican) to issue grants of land will not be presumed from his exercising such power. Federal courts will take judicial notice of Mexican laws affecting the title to lands in California.—*Bowden v. Phelps*, U. S. C. C. (Cal.), March 28, 1887; 30 Fed. Rep. 547.

185. PUBLIC LANDS—Michigan Laws—Patents—Injunction.—Under the Michigan act of 1883, when a purchaser in good faith of a tract of land has complied with said act, and the commissioner has selected land for him, but less than he is entitled to, and the rest thereof the commissioner has advertised for sale, the purchaser can enjoin the sale and be allowed to select his full amount of land, and the commissioner can be decreed to issue him a patent therefor.—*Webster v. Newell*, S. C. Mich., June 23, 1887; 33 N. W. Rep. 535.

186. RAILROADS—Killing Stock—Fences—Damages.—If the fastening of a gate in a fence on a railroad's right of way is not sufficient to turn cattle, it is a failure to fence, under Iowa laws, which allow double damages for injuries to cattle in such cases.—*Payne v. Kansas City, etc. R. Co.*, S. C. Iowa, June 27, 1887; 33 N. W. Rep. 633.

187. REMOVAL OF CAUSES—Separable Controversy.—When citizens of one State sue a bank of the same State to obtain control of bonds issued by a township and deposited with the bank by several holders, some of whom are citizens of a different State, and they controvert plaintiff's right of action, the township denying the validity of the bonds, the cause of action are separable and the suit removable.—*Wilson v. Union, etc. Assn.*, U. S. C. C. (Mo.), March 30, 1887; 30 Fed. Rep. 521.

188. REMAINDER—Life Estate—Reservation.—One may by deed convey to another an estate stipulating that the deed shall not take effect until the death of the grantor and of his wife. Such a deed conveys an estate in remainder reserving a life estate to the grantor.—*Watson v. Cressey*, S. J. C. Me., April 20, 1887; 10 Atl. Rep. 59.

189. SALVAGE—Tender—Costs.—Where the defendant makes an offer after suit brought in a salvage suit, which should have been accepted, the decree will be made for that amount, and the libellant taxed with the costs accruing after the offer.—*The Rose*, U. S. D. C. (N. Y.), June 15, 1887; 31 Fed. Rep. 176.

190. SALE—Fraud—Rescission.—One who is induced by the fraudulent representations of the vendor, on which he relies, to take a chattel in payment of a debt, may rescind the contract and return the chattel; and

when in a suit for the debt the defendant answers the sale, the plaintiff can reply the rescission.—*Johnson v. Hillstrom*, S. C. Minn., June 15, 1887; 33 N. W. Rep. 547.

191. SALE—Title—Bill of Lading.—Circumstances stated under which a party shipping, under contract, oats to a purchaser, which he refused to receive and pay for, was held not to have delivered, and obliged to suffer the loss incurred by their being burned before delivery.—*Seltgen v. Phelbreck*, U. S. C. C. (Fla.), Dec. 13, 1886; 30 Fed. Rep. 600.

192. SALVAGE—Misconduct—Disobedience of Orders—Forfeiture.—There must be evidence of misconduct to cause a forfeiture of salvage. Demanding a large bond will not cause a forfeiture, unless it was intended to oppress the claimants or force compliance with an exorbitant demand. A salvor disobeying the orders of the master of the vessel, or of the chief of the fire department, when the vessel is on fire at the wharf, is guilty of misconduct.—*The Cherokee*, U. S. D. C. (S. Car.), June 6, 1887; 31 Fed. Rep. 167.

193. SALVAGE—Ownership of Salvaging Vessel.—In an action to recover salvage, the libellant must aver distinctly and prove clearly who are the owners of the vessel that renders the service.—*The Cherokee*, U. S. D. C. (S. Car.), March 22, 1887; 30 Fed. Rep. 640.

194. SALVAGE—Vessel at Wharf—Fire.—A tug, discovering fire in another tug-boat at the wharf, proceeds there and extinguishes it. Held, that the service was a salvage service.—*The James A. Garfield*, U. S. D. C. (N. Y.), June 15, 1887; 31 Fed. Rep. 175.

195. SCHOOL DISTRICTS—Prudential Committee—Taxation.—Under Vermont law, the prudential committee may borrow money temporarily for repairs of school houses and other like purposes. Construction of Vermont statutes on the subject of taxation for school purposes.—*Brock v. Bruce*, S. C. Vt., July 8, 1887; 10 Atl. Rep. 93.

196. SHERIFF—Sale—Essentials to Validity—Tax Deed.—The sale of a sheriff under an execution must be made in conformity with the requirements of the law as to time and place, notice, etc. What those requirements are, set forth by the court. Ruling as to tax sales and tax deeds in Missouri.—*Evans v. Roberson*, S. C. Mo., June 6, 1887; 4 S. W. Rep. 941.

197. STATUTES—Amendment—Constitutional Law.—The constitutional provision of Missouri prescribing the mode by which statutes shall be amended by subsequent acts declared and applied to Missouri act of 1883, amending act of 1881, prohibiting sales of intoxicating liquors, etc.—*State v. Thurston*, S. C. Mo., June 6, 1887; 4 S. W. Rep. 930.

198. STATUTES—Constitutional Law.—The supplement approved May 1, 1876, amending a previous act by reference to its title, is void, because repugnant to the constitutional provision prohibiting the amendment of statutes in that manner.—*Appeal of Barrett*, S. C. Penn., June 1, 1887; 10 Atl. Rep. 36.

199. SUBROGATION—Conditional Sale—Chattel Mortgage—Suit by Mortgagor.—A surety on a note given for the purchase price of a chattel, where the title remains in the seller till payment in full, is subrogated in all respects to the rights of the seller upon his payment of the note. Where a mortgagor sues the mortgagee for a wrongful taking of the mortgaged property, the plaintiff can only recover the value of his equity in the property after deducting all liens thereon.—*Torp v. Galseth*, S. C. Minn., June 15, 1887; 33 N. W. Rep. 550.

200. TAXATION—Debts—National Bank Stock.—Under North Carolina laws, a person may deduct from his national bank stock his debts for purposes of taxation.—*McAden v. Mecklenberg Co.*, S. C. N. Car., June 8, 1887; 2 S. E. Rep. 670.

201. TAXATION—Injunction.—County judges will not be enjoined from levying a tax alleged to be illegal when no evidence appears that they ever contemplated making such a levy.—*State ex rel. v. Hagar*, S. C. Mo., June 6, 1887; 4 S. W. Rep. 925.

202. TAXATION—National Banks—Realty—Taxes upon

Bank Shares.—The real estate of national banks is not taxable, under the laws of Texas. The stock of national banks is taxable in proportion to its actual value. The procedure proper for a shareholder to follow, in order to have excessive taxes on his bank stock reduced to its proper proportions.—*Rosenberg v. Weeks*, S. C. Tex., March 26, 1887; 4 S. W. Rep. 899.

203. TAXATION—Penalty—Statute.—Although the law of a State may restrict the taxation in aid of railroads to a specific per cent. on the taxable property of the township, delinquents are nevertheless liable for the penalties prescribed for non-payment in addition to the amount of the tax.—*Chicago, etc. Co. v. Hartshorn*, U. S. C. C. (Iowa), April 5, 1887; 30 Fed. Rep. 541.

204. TAXATION—"Property."—The word "property," as used in a charter of a town, authorizing its officers to levy taxes on "property," does not include notes held by a resident of the town on persons, non-resident in the town and owning no property therein.—*Faughn v. Town of Murfreesborough*, S. C. N. Car. June 6, 1887; 2 S. E. Rep. 676.

205. TAXATION—Tax deed—Constitutional Law.—In Oregon, the sheriff in office, or in proper cases his deputy, is the proper officer to execute a tax-deed for land sold for taxes, if the owner fails to redeem. The legislature may make a tax-deed conclusive evidence of the regularity of the antecedent proceedings, but not of the existence of any fact essential to the validity of the proceeding or the effect upon the title of parties.—*Marx v. Hawthorn*, U. S. C. C. (Oreg.), April 20, 1887; 30 Fed. Rep. 579.

206. TAXATION—Tax title—Construction of Tax-sales—Statutes.—Irregularities in sales of land for delinquent taxes defined and declared to render titles acquired under such sales invalid.—*Burke v. Early*, S. C. Iowa, June 29, 1887; 33 N. W. Rep. 677.

207. TAXATION—Taxes—Sale for Delinquent Taxes.—In Alabama, lands are sold for delinquent taxes by virtue of decrees of courts of equity. When certain lots had been so sold and there were still unpaid taxes on them and other lots belonging to the same owner, it was held that the other lots must be sold to pay those taxes before resort could be had upon the lots already sold.—*Thorington v. City of Montgomery*, S. C. Ala., May 10, 1887; 2 South. Rep. 513.

208. TRADE-MARK—One who has no right to use a trade-mark as against a prior possessor who has a better title to it, cannot restrain a third person from also using it.—*Parlett v. Gaggenheim*, Md. Ct. App., June 23, 1887; 10 Atl. Rep. 81.

209. TRADE-MARK—"Kaiser."—Held, that the word "Kaiser," as applied to mineral water, is not a valid trade-mark, as other parties had used it.—*Luyties v. Hollensdeer*, U. S. C. C. (N. Y.), April 20, 1887; 30 Fed. Rep. 632.

210. TRADE-MARK—Title Chatterbox—Injunction.—The owner of the trade-mark, Chatterbox, as used to designate a well-known style of publication, can enjoin another party from imitating it on his books.—*Estes v. Worthington*, U. S. C. C. (N. Y.), May 10, 1887; 31 Fed. Rep. 154.

211. TRIAL—Demurrer—Jury.—It is error to submit a case to a jury when there is a demurrer to the declaration which has been joined in by the plaintiff, and has not been waived by the defendant nor disposed of by the court.—*Florida, etc. Co. v. Rhodes*, S. C. Fla., June 18, 1887; 2 South. Rep. 621.

212. TRIAL—Preliminary Examination—Statute—Construction.—The statutes of New York authorize the preliminary examination of the opposite party before trial. Construction of these statutes. When it is discretionary with the judge to grant or refuse the order for such examination.—*Jenkins v. Putnam*, N. Y. Ct. App., June 28, 1887; 12 N. E. Rep. 613.

213. TRUST—Extinction of—Trustee.—Where one of two owners of conflicting land grants gave to the other a power of attorney to dispose of his grant, and this grant was rejected by the board of commissioners:

Held, that the other party was denuded of all trust by such rejection, and could have his own grant confirmed. — *Pico v. Warner*, S. C. Cal., June 30, 1887; 14 Pac. Rep. 377.

214. **USE AND OCCUPATION—Defective Title.**—When land is sold and delivered but the title proves defective, and the vendor on demand fails to make it good, he cannot recover for use and occupation. — *Bardsley's Appeal*, S. C. Penn., Jan. 31, 1887; 10 Atl. Rep. 39.

215. **VENDOR AND VENDEE—Bond for Deed—Construction.**—A bond for title by executors under a power in a will, the consideration being the testator's interest, and upon payment of the price the purchasers to have a deed in fee for such interest, is satisfied by a conveyance of the interest of the testator. — *Twitty v. Lovelace*, S. C. N. Car., May 30, 1887; 2 S. E. Rep. 661.

216. **VENDOR'S LIEN—Accounting.**—When, in an action to sell land to satisfy a vendor's lien, there appears to have been an accounting between the parties, the amount so found to be due will be held to be the true balance due, unless the vendee furnish clear proof of mutual mistake or of deception. — *Neff v. Wooding*, S. C. App. Va., June 16, 1887; 2 S. E. Rep. 751.

217. **VENDOR'S LIEN—Evidence.**—A vendor's lien will not be enforced when the presumption of payment created by recitals in the deed is supported by evidence aliunde. — *Jenkins v. Matheews*, S. C. Ala., June 15, 1887; 2 South. Rep. 518.

218. **VENDOR'S LIEN—Equity Pleading.**—A bill in equity to enforce a vendor's lien must show affirmatively that the debt sought to be collected was contracted for the purchase of the land and for nothing else, or it is demurrable. — *Betts v. Sykes*, S. C. Ala., July 18, 1887; 2 South. Rep. 648.

219. **VERDICT—Criminal Practice.**—If upon a trial for murder the jury finds a verdict of involuntary manslaughter, it is not prejudicial error to send back the jury with instruction to find the grade of such manslaughter, as the verdict would have authorized a sentence for the highest grade of the offense. — *Wright v. State*, S. C. Ga., Feb. 26, 1887; 2 S. E. Rep. 603.

220. **WILLS—Construction—Fee Tail.**—A will giving an estate to T, "and if he should die leaving no lawful heirs, the whole shall descend, etc.," creates a fee tail in T. How a fee tail may be barred in Pennsylvania. — *Titzell v. Cochran*, S. C. Penn., May 23, 1887; 10 Atl. Rep. 9.

221. **WILLS—Executor—Power of Disposal.**—Where a testator leaves property to his executor to be disposed of to such objects, persons and institutions as he may think proper, the executor can name himself as the beneficiary. — *Beck's Appeal*, S. C. Penn., April 4, 1887; 9 Atl. Rep. 942.

222. **WILLS—Instructions.**—When upon the trial of an issue of *devisavit vel non*, part of the charge of the court considered apart from the remainder is erroneous, yet if taken altogether it is correct, there is no error. — *Hefley v. Poorbaugh*, S. C. Penn., May 23, 1887; 10 Atl. Rep. 12.

223. **WILLS—Life Estate—Fee—Heirs.**—A devise of lands to A, during her natural life-time and after her death to her heirs and assigns forever, conveys to A only a life estate. — *Gaukler v. Moran*, S. C. Mich., June 16, 1887; 33 N. W. Rep. 513.

224. **WILLS—Life Estate—Fee—Release—Remaindermen.**—An express life estate, with a devise over, in a will, is not enlarged into a fee by a direction to pay legacies charged on it, nor by a power of sale; a release by the life tenant of a fund to the remainderman will not entitle him to receive the principal till the life tenant's death. — *Hinkle's Appeal*, S. C. Penn., June 1, 1887; 9 Atl. Rep. 938.

225. **WILL—Remainder.**—The law favors the vesting of estates and will not hold a remainder to be contingent if it can be regarded as vested consistently with the apparent intention of the testator. — *Dawson v. Bates*, S. C. Ind., June 30, 1887; 12 N. E. Rep. 687.

QUERIES AND ANSWERS.*

[Correspondents are requested to draw up their answers in the form in which we print them, and not in the form of letters to the editor. They are also admonished to make their answers as brief as may be.—Ed.]

QUERY No. 8.

A gives to B ten negotiable promissory notes all dated Jan. 1, 1887, and reciting on the face of some that they are secured by a deed of trust. The notes are due in installments of \$30.00 every six months. One of the conditions of the deed of trust is that if default is made in the payment of any note when it becomes due then all shall become due and payable. Default has been made in the payment of the note due July 1, 1887. Now the question is, can suit be maintained on the nine notes, that are not yet due on their face? I do not care to sell under deed of trust nor to foreclose, as I want to get judgment at first term if I can. My idea is to file deed, trust and notes with my petition and plead the condition of the deed of trust. Are the notes due for this purpose under Missouri law? Cite authorities. B.

QUERIES ANSWERED.

QUERY No. 31 [24 Cent. L. J. 583.]

The statute of a State says: "Limitation of estates may extend through any number of heirs in being at the time when the limitations commence and twenty-one years, and the usual period of gestation added thereafter. A limitation beyond that period the law terms a perpetuity, and forbids its creation." Again it says: "An estate for years is one which is limited in its duration to a fixed period, or which may be made fixed and certain." Now, would a lease of land for 500 or even 100 years be good, or would such a lease vest an absolute estate.

A SUBSCRIBER.

Answer. Perpetuities are defined to be grants of property, wherein the vesting of an estate or interest is unlawfully postponed. 2 Washb. Real Prop. 359. Now, in a lease, there is no postponement of the vesting of the estate, and, therefore, the law against perpetuities does not apply. 1 Washb. Real Prop. 293. A lease is but a chattel interest, no matter how long it may continue, unless there is a statute altering the common law and is carved out of the fee simple estate.

P. H. D.

QUERY No. 29 [24 Cent. L. J. 534.]

A, a warehouseman in Ohio, issues to B, residing in Kentucky, a warehouse receipt for goods stored in A's warehouse in Ohio. B makes in Kentucky, a voluntary assignment, under the laws of Kentucky, of all his property to C, assignee, for the benefit of creditors, and indorses on back of receipt the following words: "Deliver to C, assignee, B," and deliver receipt to assignee. No actual possession of goods is taken by assignee, and no record made or proceedings had in the assignment, under the Ohio insolvent laws. After assignment and indorsement of receipts, A, to whom B is indebted, sues B in Ohio and attaches goods in warehouse under the law of Ohio, which gives attaching creditor preference to assignee under a foreign prior voluntary assignment. Notice of pendency of attachment is given by publication. After writ of attachment is levied upon the goods, D, residing in Kentucky, purchases of the as-

signee; and warehouse receipts are indorsed by assignee to D, in the following words: "Deliver to D, C. assignee." A proceeds to judgment in the attachment. D, obtaining personal services on A in Indiana, sues him in Indiana, on warehouse receipt and indorsements, alleging demand for goods, refusal, conversion, etc., and asks judgment for value. A pleads in bar his attachment against B under the law of Ohio. Queries: 1st. On question whether attachment or assignment gave better right, would Indiana court enforce rule in Indiana or rule in Ohio, supposing them to be in conflict? 2d. Would the assignment of warehouse receipt (in form above set out), to assignee for benefit of creditors, be considered simply an assignment of the goods represented, and would it give assignee any additional right to what he would have, had goods been assigned by simple indenture of assignment alone? 3d. Does C, the voluntary assignee in foreign State, by reason of the assignment of receipts as above stated, stand in any better position, as regards A's attachment of goods in Ohio, than if such receipt had not been issued or indorsed as above; and if so, upon what legal principle? 4th. What are the relative rights of the parties in the premises? In answer please cite authorities. A SUBSCRIBER.

Lawrenceburgh, Ind.

Answer. D is not bound by the suit of A against B, because he is not a party to it, and can sue A. The rights of the parties are determined by the law of Ohio, where the bailment was made, and where it was to be completed by the return of the goods. Wharton's Conf. of Laws, § 401. Where a claimant is not required to intervene, and it seems not to be required in Ohio, he is not bound by the result of the attachment suit. 2 Wade on Attack, § 482. The receipt is not a negotiable instrument, and a delivery of it transfers the title to the property. Second Nat. Bank v. Walbridge, 19 Ohio St. 419. We think it of no moment how the assignment was made. 1 Walt's Act. & Def. 362, 363. Since, under Ohio law, no attachment is superior to C's title and to D's, D is bound to lose his suit against A, on proof of all the facts. M. E.

QUERY NO. 25 [24 Cent. L. J. 459.]

A was a married man, having no minor children, residing on a tract of sixty acres properly allotted him under the Tennessee homestead law. His wife died. He re-married, and the second wife bore him one child, now six years old. A died, and his widow and child continued to live on the homestead until his death. Mrs. A re-married in 1886, and she, her second husband and her first husband's minor child live on and occupy the homestead, and Mrs. A has done so since A died. Several years after the allotment of homestead to A, in a proper proceeding had for that purpose, B, a creditor, had the reversionary interest in the homestead sold for debt, and at the judicial sale bought it. B, the creditor, since Mrs. A's second marriage, filed his bill against her, her second husband and A's child, alleging that, under the facts, the homestead interest fell in at A's death, and does not inure to the benefit of the second wife and her child by A, setting out the sale and purchase of the reversions, etc., and asking possession and ownership of the homestead tract. Whose is the better right, the creditor B, or A's widow (now Mrs. C) and child? Does C, Mrs. A's second and present husband, acquire any interest (and what) in the homestead? Cite authorities. The land is in Tennessee, and the parties live there.

Answer. The homestead is a life estate, and on the death of the husband goes to the widow for herself and children, and at her death goes to the minor children during their minority. It can only be lost by alienation, abandonment or death. Simpson v. Poe, 1 Lea, 703; Jarman v. Jarman, 4 Lea, 671. A's widow (now Mrs. C) has the better right. H.

QUERY NO. 27 [24 Cent. L. J. 511.]

Does a note with this erasure draw interest in the hands of a third party: "with interest at the rate of — per annum, payable annually at office of," etc. X. Y.

Answer. No one is bound for interest before the maturity of his contract, unless it so expresses. If the blank had been filled up, then the question, of authority so to do, would have decided the question, but the blank must first be filled. 1 Dan. Neg. Inst. § 145. After the note becomes due, the interest thereon depends upon the law of the place. 2 Idem. § 1458. D. F.

QUERY NO. 22 [24 Cent. L. J. 408.]

What are the names, number and nature of the present courts of law and equity in France, and especially what court has charge of matters of probate in and about Paris? What is the mode of enforcing claims of non-resident heirs against estates in process of administration? An early answer is especially desired. R.

Answer. It is doubtful whether the complete information desired can be obtained in this country, and a long article would be required to explain it. In case any business is to be attended to a lawyer resident in France will be necessary, and we advise a correspondence with such a party.—[ED. CENT. L. J.]

QUERY NO. 30 [24 Cent. L. J. 560.]

Must a lease for one year, in Missouri, be recorded to be good against a purchaser without notice? Rev. Stat. 681, says conveyances affecting real estate must be recorded. Rev. Stat. 700, defines chattels real as "real estate." Furthermore, is an estate for a year real estate such as a justice cannot have jurisdiction of, under Rev. Stat. 2837? L. I.

Answer. When a party has notice of the interest of another in any land, he is as much bound thereby as though the deed therefor were recorded. Mere possession is not notice. Casey v. Steinmeyer, 7 Mo. Ap. 556. It may be difficult to prove that a purchaser had actual notice, so the only safe way is to record the lease. In the conveyance act chattels real are real estate, but it does not necessarily follow that the prohibition against a decision by a justice on the title to lands and tenements in a different act refers to chattels real. Besides the mere fact that real estate or lands come in question, does not prevent the justice from acting. The title must be involved. Wilson v. Petty, 21 Mo. 417. A justice is specially given jurisdiction of lands in the landlord and tenant act, and in forcible entry and detainer. K.

QUERY NO. 26 [24 Cent. L. J. 484.]

A executes a chattel mortgage to B for a consideration of \$150, as stated in the beginning of mortgage. He, at the same time, executes two notes which are described in the body of the mortgage, one for \$150, due in six months, and one for \$15, due in two years. One year afterwards, A executes a second mortgage to

C on the same property; C assigns to D. Can D hold the property under Illinois laws, B's debt being unsatisfied? Cite authorities.

A READER.

Answer. Since, in Illinois, when the entire debt comes due, the mortgagee can only preserve his lien by taking possession of the property (*Cass v. Perkins*, 23 Ill. 382), the question is, can the statement of \$150 at the beginning of the mortgage be disregarded? Such a mistake could be corrected by bill in equity. 2 *Parsons* on Cont. 626. The intent is clear, and the \$150 may be rejected as surplusage. *Broom's Leg. Max.* (7 ed.) 627. General words are restricted by particular recitals. 2 *Parsons* on Cont. (7 ed.) 633, 634. The registered deed shows all parties the intent, and they can hardly claim ignorance. We think that B's mortgage has the precedence. D.

QUERY NO. 24 [24 Cent. L. J. 431.]

In action of claim and delivery, in which sheriff was not required to take the chattels prior to judgment, B, the plaintiff, recovers judgment for possession of 400 head of hogs, sued for from defendant, and in case delivery thereof cannot be had to have and recover of defendant the sum of \$1,600, the value thereof, at the rate of \$4.00 per head, and costs. Writ of execution is issued thereon and sheriff takes and delivers 96 head of hogs to plaintiff, who accepts the same. The sheriff credits defendant with 96 hogs at \$4.00 per head, and then levies on property of defendant to make balance of judgment for money, and threatens sale thereof. Defendant then applies to the court, on due notice to plaintiff upon affidavits showing proceedings of sheriff, and asks the court for an order that the judgment for \$1,600 in money be wholly satisfied, by reason of the delivery and acceptance by plaintiff of said 96 hogs. This motion was denied. Is it right? Did not plaintiff by electing to take less hogs than judgment called for waive the right to have any part of the \$1,600? The writ of execution required the sheriff to deliver 400 hogs, not a part of 400, and in case he could not do so, it then commanded him to make the value \$1,600 by levy and sale, etc. Can he execute partly both these requirements without consent of defendant? Cite authorities.

C. R. G.

Answer. A levy on personal property is never held to be a satisfaction of the judgment beyond the value of the goods levied on (*Freeman on Ex.* § 269), and the officer can continue to make levies till he finds enough property. *Idem*, § 253. In some States (Mississippi, Tennessee, Alabama and Texas), the jury must find the value of each article, and the delivery of any article discharges the defendant from paying its value. *Wells on Replevin*, § 774. Though in those States the matter is settled by statute, yet we believe other courts will act on that principle, and will hold that the sheriff is doing his duty.

N. H.

QUERY NO. 6 [25 Cent. L. J. 120.]

Does a tax-deed, under the statutes of Nebraska, convey a good title? Or can the owner be deprived of his property by tax-sale under the Nebraska statutes? Please cite authorities.

G.

Answer. 1st. A tax-deed will convey a good title, provided it is in the form provided by statute and there has been a substantial compliance with the law in all the official proceedings which lead up to it. *State v. Patterson*, 11 Neb. 266; *Haller v. Blaco*, 10 Neb. 36; *Howard v. Lancaster*, 11 Neb. 582; *Miller v. Hurford*, 13 Neb. 20; *Towle v. Holt*, 14 Neb. 227; *Reed*

v. Merriam, 15 Neb. 323; *Sullivan v. Merriam*, 16 Neb. 180. 2d. In 1871 the legislature passed an act which provides that, "wherever the title acquired by a purchaser of real estate at treasurer's sale shall fail, the purchaser at such sale, or his heirs or assigns, shall have a lien on the real estate so purchased for the full amount of the purchase money," with interest, etc., * * and "the lien hereby created may be enforced in the manner directed by law for foreclosing mortgages." Laws of 1871, pp. 82-83. In 1875 an act was passed to provide a method of foreclosing tax-liens upon real estate. Laws of 1875, p. 107. Various amendments have been made to the statute since that time, but the right of the tax-purchaser to foreclose his lien has been preserved and extended, so that at the present time the action may be brought directly on the certificate, without taking out a tax-deed. *Comp. Stat.* of 1885, pp. 522-523. Municipalities are also authorized to purchase at tax-sales, in certain cases, and foreclose. *Comp. Statutes* of 1885, p. 525. An action to foreclose the tax-lien cannot be brought until the expiration of the time to redeem—two years from date of sale. *Peet v. O'Brien*, 5 Neb. 360; *Miller v. Hunford*, 11 Neb. 377; *Bryant v. Estabrook*, 16 Neb. 217. In the action in equity to foreclose, a petition is filed in the district court setting forth the necessary facts and showing the right of the plaintiff to a decree. Service, actual or constructive, is then had upon the owner of the land who may appear and defend. On the trial a decree for the amount of taxes due with interest thereon will be rendered, which if not paid by a day named, an order of sale will be issued and the real estate appraised and sold as upon foreclosure of mortgage. The property must bring at least two-thirds of the appraised value—the surplus after paying the amount of the decree and costs to be paid to the former land-owner. The purchaser, under the decree, acquires a *valid title*, while irregularities in the tax proceedings where the tax itself is a legal or equitable charge upon the land will not defeat the action. *Otoe Co. v. Matthews*, 18 Neb. 466; *Otoe Co. v. Brown*, 16 Neb. 396; *Alexander v. Goodwin*, 20 Neb. 222; *Lyman v. Anderson*, 9 Neb. 367-8; *Reed v. Merriam*, 15 Neb. 326; *O'Donohue v. Hendrix*, 13 Neb. 257-259.

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REPORTS OF CASES Decided in the Court of Chancery, the Prerogative Court and on Appeal in the Court of Errors and Appeals of the State of New Jersey. John H. Stewart, Reporter. Volume XV. Trenton, N. J.: The W. S. Sharp Printing Co. 1887.

We need hardly commend to the profession an authority so well known and so highly valued as the New Jersey Equity Reports. The volume before us is the forty-second of the series and the fifteenth prepared by the present able, learned, and accurate reporter, Mr. John H. Stewart. The notes which he has appended to so many of the cases not only add greatly to the value of the volume but attest the fact that, to the reporter, the preparation of this volume, and indeed of its predecessors, was not simply task work done in fulfillment of a contract, but a labor of love, of one devoted to his profession and actuated by an ambition to do well whatever he does at all.

A DIGEST OF THE DECISIONS of the Courts of Law and Equity of the State of New Jersey from 1876 to 1887, Embracing all the Cases Reported in the Regular Reports of the State and also in the Reports for the District and Circuit Courts of the United States for the District of New Jersey. By John H. Stewart, Counselor at Law. Volume III. Trenton, N. J.: Naar, Day & Naar, Printers. 1887.

This, it will be observed, is the third volume of the digest of the New Jersey Law and Equity Reports of the State of New Jersey, and from the reputation of its compiler, Mr. John H. Stewart, well known to the profession as the reporter of the New Jersey Equity Reports, a strong presumption would naturally arise that it possesses every merit that a digest can possible have. Such examination as we have been able to give it have satisfied us that the work is worthy of the reputation of its author, and we have no hesitation in commending it to the favor of the profession.

THE AMERICAN DECISIONS, Containing the Cases of General Value and Authority Decided by the Courts of the Several States from the Earliest Issue to the States Reports to the Year 1869. Compiled and Annotated by A. C. Freeman, Counselor at Law, and Author of "Treatises on the Law of Judgments," "Co-tenancy and Partition," "Executions in Civil Cases," etc. Volume LXXXVIII. San Francisco: Bancroft-Whitney Company, Law Publishers and Law Booksellers. 1887.

It is again incumbent upon us to acknowledge the receipt of still another volume of that excellent collection of reported cases, The American Decisions. The eighty-eighth volume of the series is now before us, and we cannot commend it more highly than to say that in all respects it is fully equal to its predecessors. As heretofore many of the cases are fully annotated by the editor, Mr. Freeman, and the value of his notes, and indeed of everything else which comes from his pen is too well known to the profession to need any indorsement from us. As we have heretofore stated in our notices of preceding volumes, the series will close with the cases decided in the year 1869. As these reported in this volume were decided in 1865, it is apparent that the series is drawing to a close, and when completed will form a body of law of great value to the legal profession.

JETSAM AND FLOTSAM.

EXTRAORDINARY BIGAMY CASE.—The Bladekwood (Monmouthshire) magistrates have committed a collier named Evan Morgan for trial for bigamy under extraordinary circumstances. He first married in 1881 a young woman named Williams. Two years afterwards he sold her for half a crown and a pot of beer to a man named John Lake. The wife immediately went to live with her purchaser. Morgan then courted another woman, named Williams, and in 1883 married her.—*Irish Law Times*.

A DANIEL IN THE REPORTS.—The latest curiosity in reporting is to be found in the Chancery number of the *Law Reports* for February. In *Petty v. Daniel*, L. R. 34 Chanc. Div. 173, it is recorded that Mr. Justice Kay has decided the following proposition of law:—

"A judge is 'sitting at the Royal Courts of Justice,' when he is sitting in any part of the building, whether in Chambers or in open Court."

The liberal use made of capitals, inverted commas, and italics was unnecessary to impress the gravity of this ruling on the reader; but we should have been glad of further enlightenment. Is it necessary that the judge should be actually sitting in the European manner? How would it be if the judge were standing, or walking to stretch his legs? Care should be taken, if any light be thrown on these points in the future, to report the decision fully. The bulk of the report maintains throughout the excellence of the sample. In all the pomp of large type, wide spacing, recurring paragraphs, unnecessary italics, and superfluous capitals, we have a "full note" of the words which dropped from the lips of Mr. Justice Kay in deciding whether he should send to prison a man who had not been served with affidavits. This is the Daniel come to judgment.—*Law Journal*.

The *Argonaut* says: "Mr. Justice Field, of the Supreme Court of the United States, has administered a very proper and very merited rebuke to the court, its clerk, and the attorney that aided Mrs. Langtry in obtaining preliminary naturalization papers without presenting herself in open court and seeking them in a proper manner. It was a piece of shameful obsequiousness on the part of the clerk of a federal court to take its register to the residence of this English adventuress in order that she might be spared the humiliation of presenting her person in the presence of the court. We sincerely hope that what has been done is void in law, and that she has secured no legal rights from the tribunal whose officers are so unmindful of its dignity." This is quite just. Some one has wittily remarked of this woman that she seems determined to avail herself at once of the benefit of our peculiar institutions—naturalization and divorce.—*Albany Law Journal*.

A Scotch lad, accused of stealing some articles from a doctor's shop, was asked by the judge why he was guilty of such a contemptible act. "Weel, ye see," replied the boy, "I had a bit pain in my side, and my mither tauld me tae gang tae to the doctor's and take something. "Oh, yes," said the judge. "But surely she didn't tell you to go and take an eight-day clock?" "Weel, judge, you see, there's an auld proverb that says, 'Time an' the doctor cure a' diseases,' and sae I thoct"—But the remainder of the reply was lost in the laughter of the audience.